

1901-020 Chancery Causes: Peter F. Chance vs. John Blankenship
Lee Co.

P. F. Chance & Co], Marsel

CA - Business Dissolution
T - Business
Property

Additional Information:

- Merchantile Business

To the Honorable H. A. W. Sherr Judge of the
Circuit Court of Lee County, Va.

Humbly complaining, sheweth unto your honor,
your orator Peter F. Chance, would respectfully show
unto your honor, that on or about the 1st. day of
November. 1895, your orator and John Blaukuship, the
defendant hereinafter named, entered into a co-partnership
together, as General Merchants, to carry on the business
of General Merchandise, at Hagan, Va, under the firm, name
and style of P. F. Chance & Co. Your orator engaging
to furnish the house for place of business, and to bring
into the business the sum of \$1477.³⁵ And agreeing to
receive one-half part of the profits, and to bear one-half part
of the losses, And the said John Blaukuship, engaging
to transact and run the said business in a prudent, careful
and business like manner, And to bring into the business
the sum of \$160.⁰⁰ And agreeing to receive one-half part
or share of the profits, of said business, and to bear one-
half part, or share of all losses, The said defendant to live
at said place of business and to do all the buying and selling
and labor in carrying on and conducting said business (putting
his labor against your orators excess of capital) and to
share equally in the profits and losses of said business.
Your orator further alleges that the defendant was Post,
Master at Hagan, Va. with post office at their place of business
And your orator was Assistant Post Master, And that the
profits arising from said Post office was not less than
\$100.⁰⁰ per annum, which was to be equally divided
between your orator and the said defendant

And your orator further sheweth unto your honor
, that he accordingly brought into the business
the said sum of \$1477³⁵ and that the said
co-partnership was carried on and continued until
about the 1st. day of September 1900, when the same
was dissolved by mutual consent, at the time of
said dissolution an inventory was taken of the assets
of said firm, and the goods, wares and merchandise on
hand invoiced about \$1950⁰⁰ And of debts or accounts
due the firm about \$1100⁰⁰, one-half of which is
insolvent. And your orator further sheweth unto
your honor, that, no settlement of the said
co-partnership accounts hath ever been made
between your orator and the said defendant
and that since the said dissolution, your orator
hath repeatedly applied to the said defendant to
come to a final settlement with respect thereto, and
your orator well hoped that the said defendant
would have complied with such your orator's
reasonable requests, as in Justice and Equity, he ought to
have done, but the said defendant absolutely refuses so to do.
And your orator here alleges and charges that the said
defendant while conducting and running said business
* (misappropriated the partnership funds and moneys, and has
mismanaged said business, and has fraudulently and secretly
converted the funds and profits of said partnership to his
own private use and enjoyment, and in that way ~~has~~
summingly made it to appear, that the partnership done

a losing business, when in fact said partnership properly managed, in the time said business continued ought to have cleared in profits \$5000. Your orator charges that the defendant, at the time said partnership was entered into, was a poor man, in debt, and financially worth nothing, but that now he seemingly is the owner of considerable personal property, and has purchased a stock of goods and gone to merchandizing all which your orator alleges is and has been done with co-partnership funds and money. Your orator charges that said defendant hath refused to render any account of the co-partnership moneys received by him. And your orator alleges that since the said dissolution, that he has paid the sum of \$3135²⁹ in respect of the co-partnership debts, and your orator further charges, that upon a just and true settlement of the said accounts, it would appear that a considerable ^{sum} is due from the said defendant to your orator, in respect of their said co-partnership dealings, but nevertheless the said defendant has and did collect, co-partnership debts and moneys belonging to said firm, and applied the same to his own use, which the said defendant was enabled to do, by means of being in charge and possession of said books of account and said co-partnership business, your orator charges that on a true and just settlement the sum of \$1500. or \$2000. would be due your orator from said defendant. The prayer of your orator therefore is, that the said John Blankenship be made party defendant to this bill and answer the same, but not on oath that being waived, that an account may be taken, of all and every the said late co-partnership dealings and transactions until the expiration

2634.53

Plaintiff's Costs
 Clerk 5.76
 Tax 1.50
 Sheriff 1.50
 Atty 15.00
 Comm 30.00
 Writs 1.32
 A. G. Wyatt 3.00
~~Estimated~~ \$58.08
 C.O.C. 58.33

1 Ely
 Peter F. Chance Peff.
 Bill in Chancery
 John B. Clayhurnship Dept.
 1901 1st Ely rules Bill
 filed sums executed
 & Decease M.iri
 " 2nd Ely rules & N.
 Confd and Cause set
 for hearing.

June Term 1901 Decree.
 Final Ely O. B. No. 6,
 Page 562.

thereof, that the said John B. Clayhurnship be compelled to pay to your
 orator, what if anything, shall upon such account appear to be
 due from him, which in the least will be a considerable sum.
 Your orator being ready and willing, and hereby offering to pay
 what shall appear, if anything to be due from him to said
 Joint concern. And your orator prays for all athered further
 relief generally, so the nature of his case may require
 and to Equity seem meet, And your orator will ever
 pray etc,
 M. G. Ely, p. g -

To the Honorable H.A.W.Skeen, Judge of the Circuit Court of Lee County, Virginia:

The answer of John Blankenship to a bill exhibited against him in this Honorable Court by Peter F.Chance.

Respondent saving the benefits of such proper objection as may be had to said bill upon its final hearing and not waiving his said demurrer this day filed, but relying and insisting thereon, should other and further answer be required of him, answering he says:

That it is true that on or about the 1st of November, 1895 he and the Complainant entered into a copartnership for the purpose of carrying on a general mercantile business at Hagan Virginia under the firm name and style of P.F.Chance & Co. At this time your respondent was a ~~man~~ of small means with considerable knowledge of the mercantile business, while the complainant was a man in easy circumstances and with a limited knowledge of the mercantile business. Your respondent lived at Hagan, while the complainant resided on his farm some five or six miles distant.

Respondent denies that complainant correctly sets out the terms of said co-partnership, this, respondent will now attempt to do. Said contract was as follows: A small stock of goods was to be purchased. Respondent was to do the purchasing and selling, pay for the goods thus purchased out of the sales thereof, if this were possible, if not, the said Chance was to furnish the money to pay the necessary balances. In this way from time to time the said Chance furnished a considerable sum, and while respondent does not remember the exact amount, it perhaps, amounted to \$1477.35. And respondent in the same way put in \$669.49. Each of said parties were to be equal in interest and consequently equal in sharing profits and bearing losses.

It is true, as alleged in said bill, that defendant was post master at Hagan Virginia, with post office at place of business, and as Respondent remembers the Complainant was sworn in as assistant post master, but it is not true that the salary and profits arising from said office was to be equally divided between respondent and plaintiff. It is true that Respondent was to put into the business such part of the salary of said office as he saw proper from time to time just as the

plaintiff was to furnish money when it was necessary to pay into said business. Said complainant never assisted to any material extent in the management of said post office and was only there perhaps once every month or two and was in no way responsible for the conduct of said office or anything about it, and it would have been unreasonable for Respondent to have agreed to divide the salary of said office with the Complainant and it is unreasonable for said Complainant to claim it.

It is true that said business was carried on until about the 1st of September 1900, but it is not true that said business was discontinued or said partnership dissolved by mutual consent. About the first of September said complainant in company with his son and one Pat Marsey came to Hangan, came into the store and informed Respondent that he had sold said stock of goods, and he at once proceeded to invoice the same, as Respondent understood it, to the purchasers. This sale was made without the consent of this respondent and without any previous ~~consultation~~ consultation with him. Respondent denies that the goods, wares and merchandise then on hands were invoiced as between him and the said complainant. He denies that they only amounted to about the sum of \$1950.00, but on the contrary he avers that the goods then on hands, and which were taken possession of by said complainant amounted to the sum of \$2750.00 at the least. The debts due to said firm at the time said complainant took possession of said store, amounted to about the sum of \$1300.00, it is perhaps true that some of them are not good, but he denies that one-half of them are insolvent, perhaps one-fourth of them would be hard to collect, but with anything like diligence in the collection of said debts, respondent is of opinion that only a very small amount of them are uncollectable.

It is true that no formal settlement of said copartnership has ever been made, nor did respondent deem one necessary, his understanding being that the complainant took charge of said stock of goods, books and accounts in full settlement of the matter, relieving this respondent from all further liability or settlement in regard thereto, and if he ^{had} not so understood it he would never have gone out of said business without a full settlement thereof. It is true that

just before the institution of this suit complainant did mentioned a settlement, but respondent answered him, ~~that~~ as he has just above answered, that he considered the matter already settled and no further settlement necessary.

Respondent emphatically denies that while conducting the said business that he misappropriated the partnership fund and moneys belong to said firm or one cent thereof. It may be true that he did not manage said business as well and as ably as some other man could have managed, but he managed it honestly, faithfully and to the very best of his ability. He denies that he has fraudulently and secretly or in any other way converted the funds and profits of said partnership to his own private use and enjoyment. It does appear that said business was a losing one, and this is a fact. He denies that the business could have been run so as to make Five Thousand Dollars (\$5,000.00) of profit. There was not over ~~Five~~ Seven Thousand Dollars purchased by said concern during the time it was in business, and complainant must have a very high opinion of the profits of a little store to think and charge that it would yield a profit after paying all expenses of seventy-five to one hundred percent, If he does so think, he ought in all conscience to give to respondent the benefit of that per cent of profit on the stock of goods that he took possession of belonging to said partnership when he turned respondent out.

It is true that at the time respondent went into said copartnership, he was not a rich man. In fact he was a poor man, honestly striving to make a living for himself and his family, but he was by no means insolvent. He was worth at that time at least \$300.00 over and above his indebtedness; he is not worth more than that now. He has given five years of his life to the transaction of the partnership business. It is true he has purchased a small stock of goods and gone into the mercantile business for himself, the capital for which is \$500.00 borrowed from his brother, and his credit. Respondent denies that any part of his present capital has been derived from the copartnership funds or moneys belonging to said late firm. It is not true that respondent has refused to render ~~an~~ an account of the partnership

funds received by him, but on the contrary thereof complainant took charge of said books, accounts, goods and everything else pertaining to said business.

Respondent denies that since the dissolution that complainant has paid out the sum of \$3,135.29, and whatever sum he has paid has been paid out of the sale of said goods, accounts and debts collected since he took charge of said business and the ~~case~~^{business} turned over to him by respondent. Respondent denies that complainant is entitled to recover against him a considerable sum of money or any sum; he denies that since he went out of said business that he has collected anything on the copartnership debts and moneys belonging to said funds or that he has applied any of them to his own use; he denies that he had possession of the books of said concern since the termination of said copartnership.

Respondent turned over in cash to said complainant on the day he took charge of said business about \$150⁰⁰ in cash, and a bank account of \$35.00 to \$50.00. Respondent further states and charges that by the terms of said contract he was to have an interest to the extent of one-half in the house and lot in which said business was done, ~~and that~~
~~the house and lot was reasonably worth at the time of the dissolution of said partnership the sum of \$500.00. This was to be in part consideration of respondent's services in attending to said business. Respondent paid all the freight on said goods, for the fuel necessary to be used while said business, and the licenses required and all other expenses incident thereto; and after deducting the same the margin for profit was very small, indeed, so small that it resulted in loss instead of gain, but of this complainant has less grounds for complaint than respondent. Complainant has only lost a small sum of money, if he has lost anything, while respondent has lost five years of honest and hard labor and the \$669.39 which he put into said business.~~
and that said house and lot was reasonably worth at the time of the dissolution of said partnership the sum of \$500.00. This was to be in part consideration of respondent's services in attending to said business. Respondent paid all the freight on said goods, for the fuel necessary to be used while said business, ~~and the~~ licenses required and all other expenses incident thereto; and after deducting the same the margin for profit was very small, indeed, so small that it resulted in loss instead of gain, but of this complainant has less grounds ~~for~~ for complaint ~~than~~ than respondent. Complainant has only lost a small sum of money, if he has lost anything, while respondent has lost five years of honest and hard labor and the \$669.39 which he put into said business.

And now having fully answered said bill, and here denying every allegation contained in said bill not hereinbefore expressly denied or

admitted, he prays to hence dismissed.

C. T. Lawrence
B. H. Small

John Blaukuship
ads. { Answer:

Peter F. Chance

Filed in open Court
and by leave thereof
March 13th 1901

W B Munsey Clerk

P. H. Chance Plff.
against E. E. In Chancery -
John Blankenship Deft.

This cause came on this day to be heard upon
The papers formerly read in the cause, the report
of partnership settlement, by commissioner L. J.
Hyatt, and depositions filed with said
report, and exceptions to said report by plaintiff
enclosed thereon, and exceptions to said report
filed in the cause by defendant ^{no. 1. 2. 3. 4. 5. 6. 7. 8} and was
argued by counsel,

On consideration of which the court doth
overrule the exception to said Commissioner's
report by plaintiff, and the court doth overrule
all the exceptions to said report by defendant
except, those no. 5 and 7., and as to exceptions
no. 5 and 7, filed by defendant to said report
the same are sustained, And in all other
respects the report of Commissioner L. J. Hyatt
is approved and confirmed, It is therefore
adjudged, ordered, and decreed, that P. H. Chance,
recover of the defendant John Blankenship
the sum of Five hundred and twenty nine ^{07/100}
dollars, with interest thereon from June 6th, 1901
till paid, and the costs of this suit, to be taxed
by the clerk, for which execution may issue,
and it is further adjudged, ordered, and decreed
that should P. H. Chance, collect of the notes and accounts

due the firm of P. F. Chance & Co, and which were turned over to P. F. Chance, more than the sum of \$583. The amount collected over and above that sum, P. F. Chance shall pay one-half of the amount so collected to John Blanchet or they may divide equally the notes and account which are now considered insolvent, and nothing further remaining to be done, this cause is stricken from the docket.

Memorandum.

The defendant suggesting that he is aggrieved by this judgment and decree and that he desires to appeal from the same, the execution of this decree is suspended for 90 days from this date, ^{with the condition that} he ^{in the sum} leave quiet some \$1000 - with good security conditioned as provided for by law.

P. H. Lohance Peff
vs E. Deere, Farmer
John Blankenship vs
Entered on Chy O.B.
No 6 Page 562.

Enter this

H. A. W. Shum

June 6th, 1907

Peter F. Chance Plff

vs

John Blauenship Dft } In
Chancery

Upon the taking of this
cause on motion of the defendant
and leave is hereby granted
him to file his answer to said
bill, which said answer is
accordingly filed, and to which
said answer the plaintiff
replies generally, and was
argued by Counsel.
On consideration whereof,
the Court is of opinion that
the partnership account
between the plaintiff and
defendant under the firm
name of P. F. Chance & Co.
should be settled, it is
therefore adjudged ordered
and decreed that L. J. Hyatt
be and he is hereby appointed
a special Commissioner for
the purpose, who will take
oath and settle the said
partnership account, and
in order to enable the said Com-
missioner to perform said duty
the Court doth further order
that the plaintiff and defendant
do severally deliver all books,

and papers belonging to said
parties to said Commission.
Before proceeding to execute
this decree said Commission
will give the parties or their
attorneys at least five
days notice of his
sitting. He will report the
evidence upon which he
acts together with such
matters as he may deem
pertinent to the matters herein
or required by either party
in interest, and this case
is continued.

Peter to Thomas
no E. Quare
John Blount

Entered on C.D. No 6
J. 546

Enter this

March 13th 1901

Heard

The deposition of John Blankenship, taken before me, L.T. Hyatt, a commissioner in chancery for the circuit court of Lee county, Virginia, on the 20th day of April, 1901, at my office in the town of Jonesville, to be read as evidence on behalf of the defendant in the chancery cause pending in said court, entitled "P.F.Chance vs. John Blankenship."

Present: C.T.Duncan and B.H.Sewell, attorneys for the said defendant, and

M.G.Ely, attorney for the plaintiff.

The witness, John Blankenship, being first duly sworn, deposes as follows:

Ques.I.for defendant.--Please state your age, residence and occupation?

Ans.--I am 42 years of age, reside at Hagan, Va., and am a merchant and post-master.

Ques.--Who constituted the firm of P.F.Chance & Co.?

Ans.--Mr.P.F.Chance and myself.

Ques.--State as nearly as you can when that firm commenced business?

Ans.--About October, 1895, late in the month.

Ques.--Please~~xx~~ state what led up to the formation of that co-partnership?

Ans.--When I was agent there the first time, Mr.Chance and myself had some dealing, and we talked of going into the ~~marcan~~tile business. When I went back down there the second time, Monteiro and McDonald had been in business, but Monteiro had sold out to McDonald, and McDonald got at me to buy him out. I nam d the matter to Mr.Chance and he told me to see what I could get the property for. McDonald and myself kept talking on the price,

until finally we traded, at the price of \$350.00. No one was known in the trade but Mr. McDonald and myself. He had a small stock of goods there amounting to \$196.00. Mr. Chance's name was not known in the matter until we went to take an inventory of the goods. I told Mr. McDonald on the morning we were going to take the inventory of the goods that we had better have some there to help us. We got H.L. Monteiro to take the inventory. When the trade was made for the lot, the deed was made to Mr. Chance and he paid for the lot, with the understanding, as I thought that I was to have a half-interest in the lot. M

Ques.--Now, please state the terms of the contract between you and Mr. Chance, to carry on the mercantile business?

Ans.--The contract as I understood it was that we were to share equally in profits, or bear losses equally. I was to attend to the business. There was never any certain amount agreed to be put in by either. I was to put in what I could. He was to put in money and I was to put in what I could from time to time when it was necessary, but no amount was specified.

Ques.--Now you may state, if you know, how much money Mr. Chance put into the concern, and how much you put in; and in stating how much you put into it, leave out for the present any thing in regard to the post-office at Hagan, or the salary arising from it?

Ans.--He put in something over \$1400.00 which was put in in smaller amounts at different times. I put in \$160.00, which was also in smaller parcels at different times.

Ques.--How much, if anything, did you put into that business, from your salary as post-master?

Ans.--\$509.49.

Ques.--How long did that mercantile business continue?

Ans.--About 4 years and ten months, or, until Sept.1st, 1900.

Ques.--Now state how it closed?

Ans.--Mr.Chance came down early one Monday morning, and said that he had sold the business out to Mr.Marsee and his son, George. I told him that things were in a bad shape just then and that I would rather run it an a month or two.

Ques.--Did he tell you at that time that he was retaining an interest in the store?

Ans.--No sir, he did not.

Ques.--Had there been any inventory taken of the amount of goods, debts &c. on hands pr or to the time that Mr.Chance came and told you he had sold out the business; if so, state when?

Ans.--There was an inventory taken about the 1st of January 1900.

Ques.--During the time that the business continued, did you attempt in any way to conceal or hide from Mr.Chance the condition of the business; or, did you talk it over freely with him and give him all the information you had in ragrd to it?

Ans.--I never attem ted to conceal anything from him. We talked it over often.

Ques.--Please state whether said concern made or lost money?

Ans.--Lost money.

Ques.--Was Mr.Chance aware of the fast that said concern was not doing a profitable business?

Ans.--Yes sir, I think he was: he told me in January at the time the inventory was taken that if I would pay him dollar for dollar what he had put in, I might take the business.

Ques.--Did you agree to that?

Ans.--No sir, He said may be I could find a partner who would do so, and I said that I might, and I did find a partner to take Mr.Chance's proposition. But he did not want to take the business without the house, and went to Mr.Chance and offered him \$500.00 for the house and lot, and Mr.Chance told him he was not ready to sell out.

On the morning that Mr.Chance came to me and told me that he had sold out, and when I stated to him that I preferred running the business on for a few months longer, he said "I have not objected to you, and you have not objected to ^{me} ~~you~~ as a partner" I said to him that we hadn't made anything, and he said he knew it, but it seemed to be getting worse all the time. And I told him that that was all I hated about the business; that I hadn't made anything.

Ques.--Was the man that you got to go in with you and accept Mr.Chance's proposition as above stated, able to have done so?

Ans ~~Ques~~ --He was.

Ques.--In the conduct of said business, did you faithfully and honestly attempt to make it successful?

Ans.--Yes sir, I tried to do everything I could to do so.

Ques.--Please state whether or not during the time said business was run there was strong competition in the goods business at and around Hagen?

Ans.--There was.

Ques.--State whether or not you ever misappropriated, or appropriated to your own use any of the funds of said co-partnership improperly?

Ans.--I never did in any way that I know anything about.

Ques.--Have you or did you fraudulently and secretly convert the funds and profits of said partnership, or any of them, to your own private use and enjoyment?

Ans.--No sir.

Ques.--Have you refused at any time since said business was closed out as you have above stated, to make a settlement with Mr.Chance in respect to said business; and if you did refuse, please state your reasons therefor?

Ques.--We never talked about any settlement between till about Christmas 1900, Mr.Chance came over there and asked me if we hadn't better settle, that was after Christmas, and I told him I did not know that I had any settlement to make as it had all been taken out of my hands.

Ques.--When Mr.Chance came and took charge of the store in the manner stated above by you, did you understand that to be a settlement of the partnership dealings, and that he was taking the store, the goods and debts on hands, to make the most out of it he could and as a release to you of any further liability in regard to the matter?

Ans.--I ~~didn't~~ supposed that was what he was taking it for; he did not say anything to me about it.

Ques.--If you had thought that he was going to set up any further claims against you, would you have let the goods go out of your hands as they did?

Ans.--I would not.

Ques.--Mr.Chance in his deposition is asked this question:
"In looking over the checks returned from Pennington Gap Bank, there is a check given by P.F.Chance & Co. here is a check to Brown & Orr for \$52.(plus) Is that wagon partnership property

or not?" which he answers as follows: "I never knew anything about the wagon." Now please state the facts in regard to this wagon transaction.

Ans.--It is a wagon I ordered for Alex. Ingle; he has the wagon now. I gave the check to Brown & Orr for the wagon, and Alex Ingle paid me for the wagon, and the firm got the benefits of it.

Ques.--Please state the reason why said business was not more successful?

Ans.--The competition, and the strife that arose between ourselves and other merchants down there in trying to out-sell each other, which caused the sale of goods at cost and mighty little profit.

Ques.--Mr Chance claims in his bill that there was an agreement between you and him that the salary which you derived from the office of post-master was to be divided equally between you and him. Now, please state whether or not there was such an agreement, or anything said between you and him in regard to it; and, if so, when it was said?

Ans.--Mr. Chance said, soon after we went into the business there and directly after I was appointed post-master, that I had the depot and express office, and that I ought to let him have one-half of the post-office. I don't remember just what I said to him, but I did always let the post-office money go into the store treasury.

Ques.--Who was post-master at the time you and Mr. Chance formed this co-partnership?

Ans.--Monteiro.

Ques. How long did he continue post-master after this co-

partnership was formed?

Ans.--Just a short time, a month or such a matter. As soon as I took charge of the business, Monteiro had me appointed assistant post-master, and he then got me to make application for the place, in fact, he made the application for me.

Ques.--Do you know the amount of goods purchased by said firm during its continuance in business; if so, you may state the same?

Ans.--I do not know exactly, but it was about \$12000.00. I left all the bills there when I went out.

Ques.--Mr.Chance in his deposition, says that there was or ought to have been made 25 % profit on the goods purchased over and above expenses. Was there that much made, or could there have been that much made under the circumstances as they existed there?

Ans.--There was not, and could not have been.

Ques.--Do you know what per cent. on first cost of goods it takes to deliver them into the store at Hagen for freights, boxing, drayage &c.?

Ans.--I do not know exactly, but I would not put it less than 10%.

Ques.--Do you know the amount of oods purchased between the 1st day of January, 1900, and the time Mr.Chance took charge of the goods?

Ans.--I do not know exactly, the bills will show. From January to the first of May, the purchases were principally corn, meal, flour, salt and groceries; after that time the purchases were a general line.

Ques.

--Please file, if you have them, bills of the pur-

chases made between the 1st of January and the 1st of September, 1900?

Ans.--I file herewith a binch of bills, pinned together, marked "Bills 1900:", which are all the goods purchased as I remember during that period except a bill of dry goods purchased from Daniel Briscoe Bro.& Co. about the first of May, as I remember, amounting to \$420.00, or about that.

Ques.--In his deposition, Mr Chance says that when the inventory was taken of the stock on hands about January first 1900, there was an agreement between you and him that the stock should be run down until about May 1st, and that it was further agreed that you would buy no goods, but that he was to do all the purchasing, and that about May 1st settlement should be made &c. Please state how this was?

Ans.--We took an inventory in January, and we then agreed to run the stock down, and I did run it down all I could until the first of May, and he never cme to take charge of it, and then I commenced buying again. I never understaod that there was any agreement that he was to do all the buying and that I was to do no buying. Mr.Wynn was there a short time before the first of May and said to me, "What about the license?", and I said him to wait till the first of May, that Mr.Chance might want to make a change.

Ques.--State if you remember, what the inventory taken in January 1900 amounted to?

Ans.--\$2200.00. Mr Chance has given it correctly in his deposition.

Ques.--Do you know the amount of the indebtedness at that time?

Ans.--We then ascertained it the best we could to be about \$1500.00, but I afterwards found that we had not included in that a bill to L.Moses & Co. of about \$114.00.

Ques.--When Mr.Chance came down and took charge of the business about September 1st 1900 did you give to him an estimate of the indebtedness of the firm at that time?

Ans.--As near as I could.

Ques.--Do you know what it was you gave to him?

Ans.--No, I do not remember. I kept no regular bill book.

Ques.--Was you indebted to the firm at the time you closed business?

Ans.--I was to the amount of about \$86.00.

Ques.--Have you since paid it?

Ans.--Yes, I have a receipt in full of my account.

CROSS-EXAMINATION.

Ques.--Did you take out license at all any time between the first of May, 1900, and Sept.1900.

Ans.--I made application, and paid W.Y.Tucker \$1.50 on his fee.as Commissioner of the Revenue. I did not pay the license.

Ques.--What was the license tax for that year?

Ans.--About \$18.00 for tobacco and merchant's license.

Ques.--What were you to pay Mr.Chance for a one-half interest in the house and lot, in which said business was transacted.

Ans.--There was no price set.

Ques.--Did you pay him anything for a one-half interest in said house and lot?

Ans.--I did not.

Ques.--How much money did you have when you and Mr.Chance

entered into said co-partnership?

Ans.--I did not have any, only the salary I was getting as depot agent ther, which was about \$25.00 per month. I continued to be agent until the July following the formation of said partnership.

Ques.--Did you owe any debts at that time, if so, how much?

Ans.--I might have owed a few little debts about, but I don't remember the exact amount.

Ques.--By way of refreshing your memory, did you not owe Charlie Thompson \$160 or 175 ?

Ans.--No, I did not. I got \$100 from Mr. Thompson after we went into the business.

Ques.--Did you not owe the L. & N.R.R. Co. about \$200.00?

Ans.--No sir, I did not.

Ques.--Did you not owe John Wynn and E.M. Russell a considerable sum?

Ans.--No sir, I did not. I owed John Wynn \$1.50 or \$2.00, a very small amount, and I guess I owed Ed Russell from \$15.00 to \$20.00.

Ques.--You state that you put into said business the sum of \$509.49, money derived from the P.O. Please state whether or not you kept an account of that money as you put it in?

Ans.--No, I did not. I kept it quarterly.

Ques.--Why did you not keep an account of it the same as you kept an account of the \$1600.00 you put in and of what Mr. Chance put in?

Ans.--Because it keeps itself on the post-office books, and it is there, and there was no use in keeping a separate account of it, as the post-office books showed what it was.

Ques.--Did Mr.Chance ever know that you claimed to have put anything in said business except the \$160.00 until this suit was brought?

Ans.--I suppose he knew the post-office money was put in all the time.

Ques.--Did you ever tell him that you were putting the post-office money into the business?

Ans.--I suppose he knew it all the time.

Ques.--Did you ever tell Mr.Chance that you were putting the post-office money into the business?

Ans.--I don't know that I did or did not.

Ques.--Is it not a fact that you put said post-office money into said business by giving yourself credit on your individual account with said firm?

Obj.--The question is objected to because the account book will show for itself as to this, and is the best evidence.

B.H.Sewell, for deft.

Ans.--No sir.

Ques.--Did you not make money and prosper during the continuance of said partnership?

Ans.--I have made some money out of the Hotel and Livery business, a living.

Ques.--How many horses and rigs did you keep in running your livery business?

Ans.--I had one buggy, an old wagon, and from four to six horses.

Ques.--When where and how did you get them?

Ans.--I had two old horses when I went down there, got one from my brother, George, and one from my father, and one from Van Carter, and one from Johiel Wolfe.

I got the wagon from Link Collins for \$25.00, and he took the wagon and my team~~xxx~~ and hauled for John McDonald and got his pay in that way. I bought the buggy from my brother, Goege, and he has my note for it or a part of it yet.

I paid for the Wolfe mare out of what she earned, and also for the one I got from my father. The Wolfe mare earned \$125.00 in one year, and only cost me \$25.00. I gave Carter my note for the horse I got from him, paid him some hogs on it last fall, and paid some this fall in a cow, only finished paying for him a short time ago.

Ques.--Have you enumerated all the horses and rigs that you bought between November, 1895, and Sept. 1900.?

Ans.--No sir, I have not. I have two horses now that belong to my wife. They were brought there and left at my stable, and I had a \$20.00 feed bill on them, and then bought the horses and Hiram Lewis bought the harness and buggy, and went on the note with me for the horses. My wife then paid the note with her money and thus became the owner of them.

I also got a wagon from my brother George in a land trade, and sold it to Van Carter for \$55.00.

Ques.--Did you not purchase two levers in a threshing machine; and if so, please state how you paid for them?

Ans.--I did. I bought the first lever from Andy Johnson and paid him a note of \$40.00 that I had on Ellis Jones, of Middlesboro for the mare I bought from my brother, and paid him the rest in the store. I gave \$55.00 for said lever. I bought the other lever from W.J.M. leham and gave him a note I had on W.P. Weston and Wm. Medlock and sold him the Phone I had down there in the store and paid him a little in the store.

Ques.--Is it not a fact that you paid Andy Johnson one-half in the store, and the other half in cash which belonged to the firm?

Ans.--No sir.

Ques.--I see among the checks returned from the Pennington Gap Bank, a check dated July 25th 1899 for \$25.00, drawn by P. F.Chance & Co. and made payable to yourself, and endorsed by Andy Johnson. Is not that a payment of that lever of the threshing machinse?

Ans.--I had a check from L.S.Jones for \$35.00 which I gave to Mr.Johnson. He took it to Mr.Crouse's to get it cashed and could not do so, and brought it back to me. I took it and gave ~~xx~~ him ten dollars in cash and the check which you hand me, and sent the \$35.00 to the bank to be placed to the credit of P.F.Chance & Co.

Ques.--Where does L.S.Jones live, and what is his business?

Ans.--He lives in Middlesboro, and and was then a traveling salesman for Glazebrook. He is now in the grocery business.

Ques.--Did I understand you to state in your examination in chief that the partnersh ip of P.F.Chance & Co. lost money?

Ans.--I suppose you did understand it; I said it, or intended to.

Ques.--Please state how it lost money, and the cause?

~~Ans.~~ Ans.--It lost money by selling goods too cheap.

Ques.--Did you sell goods below cost?

Ans.--Sometimes.

Ques.--Why did you sell goods below cost?

Ans.--To gain trade.

Ques.--Is that the manner in which you transact business?

Ans.--Yes. I have lost a good deal of money, but that was

not what I meant to do there.

Ques.--When did you first find out that your business was losing money?

Ans.--I knew it pretty much all the time. We did not lose any amount to anything for the first year or year and a half. I mean that I knew from the way we were selling that we could not be making anything.

Ques.--When and where did you first tell Mr.Chance that your business was losing money?

Ans.--I don't know the exact time, but we talked about that we were not making anything much now and then all along. Then when we took the invoice Mr.Chance said himself that we had lost money.

Ques.--Did you really know that you were losing money until you took the invoice in January 1900?

Ans.--Yes sir, I did.

Ques.--Did Mr.Chance know it till then?

Ans.--I think he did, can't see why he shouldn't.

Ques.--What makes you think that he knew it?

Ans.--We talked the matter over, that we didn't think we were making much, if anything, from the way the stock run.

Ques.--When had you talked the matter over?

Ans.--At different times.

Ques.--When was it that you had told Mr.Chance that he could sell the business or change hands with it any time he wanted to?

Ans.--After we took the inventory in January.

Ques.--When the business was wound up on or about the 1st day of September, 1900, did you or not assist in taking the in-

voice? at the time you went out of the business?

Ans.--We started in to take an inventory, and I gave out most of the things.

Ques.--Did you not give out everything?

Ans.--No sir.

Ques.--What part of said invoice was taken without your giving it out?

Ans.--Sometimes at dinner, morning and night they worked some when I was not in there.

Ques.--Did you assist in making off the list of notes and accounts which was turned over to Mr.Chance?

Ans.--Yes sir, he and I did that.

Ques.--In that list of account was there not an account of \$22.00 on H.L.Monteiro that has been paid to your brother, George, and you given credit for it?

Ans.--Yes, he wrote me that it had been paid to him. He has never paid it over to me unless he has given me credit on a note he holds against me. He has not sent me a receipt or the note.

Ques.--How long did you stay at the place of business of P. F.Chance & Co. after the last inventory was taken?

Ans.--I did not stay but till the next morning. I asked Mr.Chance who he wanted this money paid over to, me or him or who, and he said just let these boys collect it. And that is the reason I went out of it.

Ques.--Did not Mr.Chance insist on your staying there, and helping him collect notes and accounts due the firm, wind up the business, and pay off the indebtedness of the concern?

Ans.--Not till after I had moved out.

Ques.--Did you not promise him that you would help to pay off the indebtedness of the firm?

Ans.--I don't remember that I did.

Ques.--Have you not already helped to pay some of the indebtedness?

Ans.--I gave him \$125 00.

Ques.--Where did you get that money?

Ans.--From my brother, Cephas Blankenship.

Ques.-- You stated on yesterday that the purchases of goods of said firm during the time said partnership continued amounted to about \$12000.00. Please state about how much profits ought to have been made on that amount of purchases?

Obj.-- The foregoing question and any answer thereto is objected to as evidence because there is nothing in the pleadings to warrant it. Profits were not made and it is mere speculation entirely useless to go into the question of what might, would, could or should have been done.

C.T.Duncan, and B.H.Sewell, for deft.

Ans.-- We ought to have made 20% if we had had no opposition. I mean by that that this is as high as a man can sell goods at this time.

Ques.-- You stated on yesterday that you sold goods below costs. Please name some articles that you sold below cost?

Ans.-- We sold, flour, sugar, coffee, shoes and other articles.

Ques.-- Was it any part of your partnership contract with Mr. Chance to sell goods below costs?

Ans.-- I don't know that it was any part of the contract, but then he knew that we were selling goods ~~below cost~~ *cheap*.

Ques.-- By whose authority did you sell goods below cost?

Ans.--~~xxxxxxx~~ I suppose I was the man, I was doing the selling.

Ques.-- In marking up your goods for sale did you mark them up to be sold at cost, or at a profit?

Ans.-- We marked them to sell at a profit, b t a man does not always sell the way the goods are marked.

Ques.-- At about what average per cent of profit did you mark them for sale?

Ans.-- At about 25% on first cost.

Ques.-- Wasn't it your duty to set down in a book the amount of all your purchases?

Obj.-- Objected to because it is raising an issue which is not raised by the pleadings in the cause and it is no where shown in the contract alleged in the pleadings or by the attempted proof of said contract of partnership, that it was the duty of the witness to keep a book containing the purchases made by said firm.

C.T.Duncan and B.H.Sewell, for deft.

Ans.-- It would have been a more business way.

Ques.-- In the beginning of said partnership didn't you begin to keep such a book?

Ans.-- I did not. But we did keep a book a while, but we didn't keep it up because we didn't begin it at the start.

Ques.-- On yesterday you stated that in your livery business that you kept from four to six horses, didn't you keep as many as eight most of the time?

Ans.-- No sir.

Ques.-- How many horses did you have on the first day of February 1899 and the 1st day of February 1900?

Ans.-- I cannot answer that exactly, but I don't think I had over six at either time.

Ques.-- What is the cost of keeping a horse per year when you have all the feed to buy?

Obj.-- The foregoing question and any answer thereto is objected to because wholly irrelevant and immaterial, and besides the evidence on this point already shows that these horses were used for livery and were on the road a large part of the time.

C.T.Duncan and B.H.Sewell for deft.

Ans.-- My horses didn't cost me over \$30.00 per year.

Ques.-- Did you run an individual account with the said partnership firm and if so did you charge yourself with everything which you took out of the partnership concern?

Ans.-- I did run an account, and I charged myself with everything I took out when I didn't have the money to pay for it. If there was anything I did not charge myself with, I have forgotten it.

Ques.-- Was that account kept in any of the books here, if so please pick them out and lay them before the commissioner?

Ans.-- The accounts were kept in the books ~~here~~ which are here. I think the account runs through all the books.

Ques.-- Did you charge yourself with what you paid Andy Johnson in store on the threshing machine, if so please take the book and point it out to the Commissioner?

Ans.-- I did charge it to myself. I might have charged the articles of goods he got on my own account to myself. He got articles at different times and I can't now point them out.

Ques.-- Ppoint out to the Commissioner where you charged yourself with what you paid Mileham in the store on his interest in the threshing machine.

Ans.-- I point out to the Commissioner on Day Book, on August 4th, 1899 where I charged myself with \$11.65 paid W.J. Mileham.

Ques.-- What was the amount of the note on Weston Matlock that you let Mileham have and what was it for?

Ans. It was for \$30.00 and for a mare I sold Matlock.

Ques.-- Did you notify Mr. Chance of every bill of goods you bought?

Obj.-- Objected to because irrelevant and immaterial.

C.T.Duncan and B.H.Sewell, for deft.

Ans.-- I did not.

Ques.-- You stated on yesterday that at the time of the last invoice when you turned the business over to Mr.Chance that you understood that to be a settlement of all your partnership dealings; if so why did you afterwards pay \$125.00 on the indebtedness of the firm?

Ans.-- I did not say that I understood that to be a settlement between me and Mr.Chance, if I did I didn't mean it. I paid the \$125.00 because I didn't aim for Mr, Chance or no other man to lose money on me if I could help it. I borrowed \$250.00 from my brother *Le*phus and \$40.00 from my father. I turned over \$125.00 of this money to Mr, Marsee for Mr.Chance and paid some bills against P.F.Chance and Co. which had not been turned over to Mr.Chance with the balance.

Ques.--Please state what bills you paid the balance of that

money?

Ans.--I paid the Nowing Mills Co. \$75.00 and to John R. Watts Seed Co. \$40.00. I did not mean to say that I paid the whole of the money I borrowed as above stated on the debts of the firm of P.F. Chance & Co. I only paid the \$125.00 and the two bills mentioned amounting to \$115.00.

Ques.--On yesterday you spoke of having been at one time able to secure a purchaser for Mr. Chance's interest in the business. Please state who that was?

Ans.--Van Carter.

Ques.--You stated on yesterday that you told Mr. Chance at the time of the last invoice that your partnership business was in bad shape, and you all stated on yesterday that your business had lost money. Please state who got your business in bad shape and caused it to lose money?

Ans.--I was the man; I was doing all the business, buying and selling, and of course was responsible for the state of the business. Mr. and Mr. Chance talked it over, that we did not know whether we were making anything or not.

Ques.--Didn't you tell Mr. Chance when the last invoice was taken that the indebtedness of your firm was not over a \$1000.00 or \$1200.00?

Ans.--I think I said \$1000.00 or \$1500.00, but I found out it was in a worse shape than I thought it was.

Ques.--Are you not in the mercantile business now?

Ans.--Not very much.

Ques.--How much?

Ans.--I guess I have a stock worth some \$800.00 or \$1000.00?

Ques.--Are you making or losing money?

Obj. Question objected to because immaterial and irrelevant.
B.H.Sewell, for defendant

Ans.--I am not making or losing very much, for I am not selling much.

Ques.--Are you selling any goods now at cost or below cost?

Ans.--Yes, some shoes and things I bought from Mr.Crouse
I have sold below cost.

Ques.--Do you expect to continue selling goods below cost?

Obj.-- Objected to because irrelevant and immaterial.

B.H.Sewell, for deft.

Ans.--I don't expect to make a practice of it, but if I stay in the mercantile business I will doubtless do so. Some things a man has to sell below costs to get his money out of them.

Ques.--Did you keep all your accounts in these books that are here before the commissioner, or have you other books that are not here?

Ans.--I havn't any other books that I know anything about. All the books were left in the store there. If there are any books out they have been lost.

Ques.--Didn't your threshing Machine Co. run an account with said store?

Ans.--Yes sir.

Ques.--Will you please take these books and point it out to the commissioner?

Ans.--I don't see the book here. That account was kept on a small memorandum book in which the Threshing Machine Accounts were kept. It is at home, if it is not here.

Ques.--In going over the bills which you filed with your depositions on yesterday, there is one for buggy wheels. Please

state who got those wheels?

Ans.--I got a pair of wheels.

Ques.--Did you not some time after the last invoice was taken, about Rose Hill Church, tell John W. Smith that when you and Mr. Chance made your partnership settlement that you would have about \$800.00 for your part of the profits?

Ans.--I never told Mr. Smith such a thing as that that I remember of. I had a conversation with Mr Smith at Low Gap Church, and he asked me how Me and Mr. Chance came out, and I told him we had not made anything; he said he reconed there would be no trouble about it, and I told him I hoped not; and he said he hoped not, that he did not want any trouble to come up between me and Mr. Chance.

Ques.--On May 29th, 1899, you gave a firm check for \$3.90 to Montgomery Ward & Co. Please state what that was for?

Ans.--That was for a hat that my wife ^{had} ordered.

Ques.--Did you charge yourself with the amount of that check; if so, point it out to the commissioner?

Ans.--I do not remember whether I did or did not. She always had the money to buy anything that she bought.

Ques.--On the 19th day of February, 1897, you gave E.M. Russell, a firm check for \$19.71. Please state what that was for?

Ans.--I owed Mr. Russell an account, and I guess I sent him this check to pay it. I paid the firm for the check, I always did do that when I made a check payable to myself.

Ques.--On the 10th day of March, 1897, you gave Wynn Daugherty a firm check for \$18.75, or drew a firm check to yourself for said amount which is endorsed by Wynn Daugherty. Please

state what that check was for?

Ans.--It was for corn.

~~RE-DIRECT-Examinationxxx~~

Ques. Please state, in your opinion, as near as you can the amount you made each year on your livery business during the time of said mercantile partnership?

Ans.--I suppose about \$300.00.

Ques.--Do you mean that you made that much over and above expenses?

No sir.

RE-DIRECT-Examintion.

Ques.--On your cross-examination, you were asked, the following question: "What were you to pay Mr.Chance for a one-half interest in the house and lot in which said business was transacted?" and you answered: "There was no price set." I want to ask you what you expected to get a half interest in said house and lot at ?

Ans.--If I ever got it at all, or was ever able to buy it, I expected to get it at the price at which Mr.Chance got it.

Ques.--In answer to a question propounded to you on your cross-examination you stated that at the formation of said co-partnership you had no money only the salary which you were getting as depot agent at Hagan. Now I want you to state what you were worth at that time, if anything, over and above your debts and liabilities?

Ans.--About \$250.00 or \$300.00

Ques.--What are you worth now over and above your debts and liabilities, not counting any liability on account of the co-partnership matters of P.F.Chance & Co.,?
?x

Ans.--I would give what I have to come out even, leaving me without a cent in the world. And I may be behind some.

Ques.--What would have been a fair and reasonable compensation, per month, for the services, work and labor which you performed for the firm of P.F.Chance & Co.?

Obj. Objected to because not an issue, and because immaterial.

Ans.--Not less than \$20.00 per month.

Ques.--Do you mean that the work and labor which you performed for that firm, out-side of the work you did in the post-office and around your house, was reasonably worth \$20.00 per month?

Ans.--Yes sir:

Ques.--You state that you gave up the agency of the L. & N. R.R.Co. at Hagan on the 1st of July after the formation of said copartnership. Why did you have to give that up?

Ans.--I could not attend to both places and had to give it up in order to attend to the store.

Ques.--How often did Mr.Chance visit the store?

Ans.--Sometimes once or twice a week, and again it would be two or three weeks.

Ques.--In your opinion, judging from the appearance of the stock of goods, were there more goods in the store on the 1st of January, 1900, or on the 1st of September, 1900?

Ans.--I always thought there was \$500.00 worth more in the stock the 1st of September than at 1st of January, that was my opinion of it.

Ques.-- Did you pay the firm of P.F.Chance & Co. for the set of buggy wheels which you got?

Ans.--I think I did

Ques.--Did not Mr.Chance have access to everything pertaining to this business during all the time it was running, and could have known the status of it at any time he ~~was~~ desired.?

Ans.--He had access to it all all the time, and I suppose he could have known the status at all times.

Ques.--Are there other accounts belonging to said firm, other than those invoiced and taken charge of by Mr.Chance; if so, state, if you can, who those account are on and what they amount to?

Ans.--There was an account against the Daisy Iron & Mining Co. amounting to \$32.00 plus somewhere on the books which was not listed; one on Hen Clifton for \$2.00, one on Rob.Clifton for \$4.24, an account on W.S.Scott for about \$4.00; and an account against the Johnson Threshing Co. for from \$3.00 to \$4.00, exact amount not remembered; and an account on Patton Morgan for about \$13.00 which was not listed.

Ques.--What is your opinion of the solvency of the accounts listed?

Ans.--I think 85% or 80% of them could be collected.

Ques.--Did Mr.Chance know of the strong competition between the firm of P.F.Chance & Co. and Mr.Crouse?

Ans.--He knew there was a strong competition, but I don't believe he knew it was as strong as it was.

Ques.--Do you know how your competitor, Mr.Crouse, came out; whether he made or lost money?

Obj.--Objected to because immaterial.

Ans.--He claimed to me all the time that he was losing money, and claims yet that he lost money

books, bills, checks &c. brought here in a valise be treated as evidence in this case in so far as they refer to the partnership business of P.F.Chance & Co.

L. T. Hyatt

Ques. by C.T.Duncan.--I notice in looking over the checks drawn upon and paid through the Pennington Gap Bank that quite a number of them show that they are drawn for checks, or balance on checks, and cash. Will you please state how this occurred.?

Ans.--Sometimes a man would bring a large check, trade out a part of it, or get me to cash a part of it, and I would give them a check for the balance. Sometimes a person would come there and want to send for something, and give me the money and get me to give a check instead, as it would be easier and safer to send. The large checks thus took in and cash thus took was deposited to the credit of P.F.Chance & Co.

And further this witness saith not.

John E. Blankenship

Virginia, Lee County, to wit:

I, L.T.Hyatt, a commissioner &c. do certify that the foregoing deposition of John Blankenship was duly taken, subscribed and sworn to before me at the time and place and for the purposes therein mentioned.

Given under my hand this the 1st day of May, 1901.

L. T. Hyatt

Comr. in Chy.

RE.RE.Cross-Examination.

Ques.--Did Mr.Chance have free access to all the bills of goods which you bought?

Ans.--I think he did; they were kept right there in the desk.

Ques.--Have you collected any accounts or notes due your firm since the last invoice?

Ans.--None except what I have paid over to Mr.Marsee. I have only collected a dollar or two.

Ques.--Did you or not collect the threshing machine account with your firm?

Ans.--No, that account has not been paid yet


Ques.--In your contract of partnership with Mr.Chance, was there any agreement that you were to be paid \$20.00 per month, or any other sum per month for carrying on and running said business?

Ans.--No sir, there was no such an agreement as that that I know anything about.

Ques.--Who are you now indebted to and how much?

Ans.-- Cowan, McClung & Co. \$400 and odd dollars, Sam C. Roney Shoe Co. \$113.28, Elizabethtown Milling Co.\$52.00, J.Leo pold \$40.00, Grinstead & Tinsley about \$30.00, Altshelär \$42.00 I owe my brother, Cephas \$500.00, my brother, George \$22.00, and I may owe some other little debts about.

~~And further this witness saith not.~~



It is agreed by the parties to this suit that all the papers

John Blauserhip

~~att~~ & in ch.

P. F. Chance

Deposition of
John Blauserhip.
~~~~~



The deposition of P.F.Chance, taken before me, L.T.Hyatt, commissioner of the circuit court for Lee County, in the chancery cause therein pending, entitled P.F.Chance vs. John Blankenship, at my office in the town of Jonesville, on the 1st day of May, 1901, in rebuttal, to be read in behalf of the plaintiff.

Present: M.G.Ely, for plaintiff

C.T.Duncan & B.H.Sewell, for defendant.

The witness, P.F.Chance, being duly sworn, deposes as follows:

Ques.--Mr.Blankenship states in his deposition that you knew or might have known that your partnership business was losing money before the invoice of January, 1900, and that you had frequent talks about it. Please state whether or not that is a fact?

Obj.--This question and any answer thereto are objected to, because this witness, while on the stand in giving his evidence, in chief, was cross-examined on his knowledge of the business as to whether or not it was doing a making or a losing business, as to his means of acquiring knowledge of its condition, and has given his version of it. And it is not admissible now to go into and re-hash the matter.

C.T.Duncan and B.H.Sewell, for deft.

Ans.--We never had no conversation in regard to our firm losing means there. I did not know that the partnership was losing money before we took the invoice in January. I could not have known without taking an inventory.

Ques.--Mr.Blankenship, in his deposition, states that he sold goods below costs and at costs. Please state whether or not you knew that he was running the business in that way, and



whether or not it was with your knowledge and consent for him to sell goods in that way?

Obj.--Objected to for the same reasons to the last above question.

C.T.Duncan and B H.Sewell, atty.

Ans.--I did not know that he was selling goods below, or at costs. And of course it was not with my consent that he made sales at or below costs.

Ques.--If you had known that Mr.Blankensh p was selling goods below costs and losing your firm money, what would you have done?

Ans.--I should have tried to have closed the business as quick as possible.

Ques.--Didn't Mr.Blankenship represent to <sup>you</sup>~~me~~, or make the impression on you, all the time, until the first inventory was taken, that your firm was making money?

Ans.--That was the way I understood it.

Cross-examination.

Ques.--Did you buy goods from that concern?

Ans.--I did

Ques.--How did you get them?

Ans.--There was an agreement between Mr.Blankenship and myself that we were to get our own goods at cost and carriage. And I got mine in this way was the way I understood it.

Ques.--Then you did know that that firm was selling some goods at a loss did you not?

Ans.-- If you would count that a loss, I knew it.

Ques.--Well your firm had to pay license, and for fuel did it not?



Ans.--It did.

Ques.--Then if goods were sold merely for cost and carriage they would be sold at a loss would they not?

Ans.--They would.

Ques.--The last question propounded to you on your examination in chief reads as follows: "Didn't Mr. Blankenship represent to you or make the impression on you all the time until the first inventory was taken that your firm was making money." Your answer is as follows: "That was the way I understood it." Please explain what you mean by this answer?

Ans.--I mean that was the first time it came to my knowledge that the firm was losing money.

Ques.--Then you do not mean that he represented to you that the firm was making money?

Ans.--I frequently would ask him how he was getting along, and his answer would be: doing very well, I think.

Ques.--Could you not have had an inventory taken at any time you desired?

Ans.--I suppose I could.

Re.examination.

Ques.--Did your firm pay any license tax for the year 1900 at all, or did you just recently pay the taxes for that year yourself?

Ans.--I paid them the other day when I was up here out of my own money. I paid \$18.00.

And further this deponent saith not.

P. F. Chance

No other witness appearing the further taking of these depositions is adjourned until to-morrow morning at 9 o'clock.



at same place. This May 1st, 1901.

L.T. Hyatt

Comr. in Chay.

Met pursuant to adjournment at the office of L.T. Hyatt, in Jonesville, Virginia, on the 2nd day of May, 1901.

The witness David Chance, being duly sworn, deposes as follows:

Ques. I.--Please state your age, residence and occupation?

Ans.--Age, 20; residence, Beech Springs; occupation, farming.

Ques.--Please state whether or not you acted as salesman at Hagan for the firm of P.F. Chance & Co, during the continuance of their partnership; and if so, how long did you remain there?

Ans.--I did act as salesman for said firm, about a year, I guess, or a year and a half, all put together.

Ques.--Please state whether or not you sold any goods at or below costs, or knew of Mr. Blankenship selling goods at or below costs at or during that time?

Ans.--I never sold any below costs and never knew of him selling any.

Ques.--At any time when you was at their place of business did you hear him say anything about whether or not the firm was losing money or making profits?

Obj.--The foregoing question is objected to if it is offered as evidence in chief, because the plaintiff has already several days ago closed his case in chief; if offered as rebuttal, because no foundation is laid for it.



Ans.--Mr.Blankenship told me that he thought they would have \$1000.00 profits when they got everything straightened up.

Ques.--Didn't he tell you at different times that the firm wasmaking money and doing a successful business?

Obj.--Objected to for the same reasons stated in the objection last above and for the further ~~the~~ reason that the question is directly leading?

C.T.Duncan and P.H.Sewell, for defendant.

Ans.--He did.

Ques.--Please state all you may know in regard to the Andy Johnson threshing machine transaction?

Ans.--Mr.Johnson came there one day when Mr.Blankenship was gone to the threshing machine, and said that Mr.Blankenship has bought a lever, or two levers from him, I do not now remember which, and said that he was to pay him half in the store, and said that he had traded out \$6.00 or \$7.00 and had come to trade some more. I ~~he~~ asked him what he had gotten, and he had a little book which he got out and named over the things he had got, and said Mr.Blankenship had charged it on his account. It was not on his account. I looked to see if Mr.Blankenship had charged himself with it, and could not find it on his account. Mr. Johnson traded some with me that day which I put on the day book, and afterwards gave it to Mr.Blankenship and saw him charge it to himself on his account.

Obj. --The foregoing answer , in so far as it details statements made by Andrew J hnson, is objected to because hearsay; and in so far as it undertakes to show what is or is not shown by the books, it is objected to because the books are the best evidence.



C.T.Duncan and B.H.Sewell, for deft.

Ques.--Please state how and when you found out that the firm of P.F.Chance & Co was so largely in debt?

Ans.--I was staying there, and Mr.Blankenship was gone somewhere when the morning mail came in, and there were a couple of letters in the mail for P.F.Chance & Co which contained duns for about \$500.00, something over \$200.00 each. From that time we wrote and found out what we owed wholesale men, that is, I notified my father about the duns, and he wrote and found out about the matter.

Ques.--Please state what you know of Mr.Blankenship's indebtedness to the L.& N.R.R.Co. and how you know it?

A.--All I know about it was from a letter written by the L.& N. R.R.Co to Mr.Blankenship. It was in the hands of the depot agent, *at Hagan, Mr Boston,* when I saw it, and the best I remember it was \$224 and some cents.

Obj.--The foregoing answer is objected to (1) because no foundation is laid for the introduction of any evidence in reference to a letter showing the indebtedness, (2) any evidence in reference to said letter is mere hearsay. Said letter, if in existence, should be produced, or its loss accounted for. This is necessary before the contents of the letter can be offered. (3) Said letter is not shown to have been signed by anybody, and no evidence is offered as to its genuineness.

C.T.Duncan and B.H.Sewell, for deft.

Cross-examination.

~~XXXXXX~~ Without waiving the benefit of the objections offered to the evidence in regard to the letter above spoken of by the witness, the defendant, by his counsel, proceeds to cross-examine.



Ques.--What was the date of the letter you saw above spoken of by you which you saw in the possession of Mr. Boston?

Ans.--I don't remember the date of the letter. To the best of my recollection it was last January, a year ago, that I saw the letter.

Ques.--Can't you give some idea as to how long said letter bore date before January, 1900, when you saw it?

Ans.--I don't remember anything about the date, but it was an old looking letter. It was written on type-writer.

Ques.--By whom was it signed?

Ans.--I don't remember.

~~Ques.~~--Was it not signed by the L. & N. R. R. Co.?

Ans.--I don't remember who it was signed by.

Ques.--If you don't know who it was signed by, how did you come to state, in your examination in chief, that it was written to Mr. Blankenship by the L. & N. R. R. Co.?

Ans.--It was written on their letter heads and called on Mr. Blankenship for a remittance of the amount I have named.

Ques.--Do you know whether that letter was written by the authorities of the Railroad Company?

Ans.--I do not.

Ques.--Who did you first tell and when that you had seen such a letter?

Ans.--Boston told me not to say anything about it, and I never did say anything about it to anybody except my father. I told him about it a short time afterwards.

Ques.--How come Mr. Boston to show you the letter?

Ans.--I was there at the depot, and he was looking to the old letters there, and handed me that letter and said that it



was a letter from the Railroad to Mr. Blankenshi for a remittance of the amount due by him.

Ques.--Did you ever say anything to Mr. Blankenship about that letter.

Ans.--No sir, I never did.

Ques.--How come you to tell your father about it?

Ans.--I always tell him of such circumstances as that, and just told him is all I know about it.

Ques.--Do you mean to say that when a man shows you a private letter and tells you to say nothing about it, that you always tell your father?

Ans.--This is the only letter I remember of ever telling him about. I would not always tell him. There are letters that would not concern his business, perhaps.

Ques.--You state in answer to a question asked you in chief that you acted as salesman for the firm of P.F. Chance & Co. about a year or year and a half, all put together. Please state when this was?

Ans.--I was not there at all, I don't think the first year they were in business. I was there sometimes just one day, sometimes I would stay there a week or so, and sometimes a month or more at a time. I would stay there when I was not in school and had nothing else to do.

Ques.--What was the longest time you ever stayed there at once time?

Ans.--The longest time, I think was from the 1st of January till about the last of March, as I remember.

Ques.--During that three months you were there in 1900, were there much new goods bought?

Ans.--A few groceries is all I remember.



A bill of shoes were bought and came to the depot, but they were sent back.

I count the bills to be \$688.11 for said period, made up mostly of groceries, but there is some hardware.

Ques.--During the time that the firm of P.F.Chance & Co. was conducting business at Hagan, were there any other mercantile establishments there?

Ans.--Yes, Mr.Crouse had a store there.

Ques.--Was there competition pretty strong between your firm and Mr. <sup>Levanse</sup> Chance?

Ans.--No sir, we went on just the same as if he had not been there; we didn't pay any attention to him, and I don't suppose he paid any to us.

Ques.--Did Mr.Crouse sell goods pretty cheap?

Ans.--Some things he did and some he did not.

Ques.--Did the firm of P.F.Chance & Co. sell goods pretty cheap or pretty high?

Ans.--They sold at a reasonable price, like most other merchants, so as to make a reasonable profit.

Ques.--At what per cent. on first costs did you sell?

Ans.--At different per-cents. On shoes and hats we would usually get about 20 to 25 per cent, and from that on up to 100 per cent on snuff and things like that.

Ques.--Was anything sold at less than 20 per cent?

Ans.--Groceries usually run down under 20 per cent., but sometimes over that.

Ques.--Wasn't a part of the goods marked to sell at 10% and was any goods marked to sell above 50% on first cost?

Ans.--No goods were marked to sell at 10 % on first cost



that know of. There were goods marked to sell above 50% on first cost.

Ques.--Were any goods sold at cost and carriage?

Any.--Not that I knew of any, except what my father and Mr. Blankenship took out themselves.

Ques.--What did you sell salt at by the sack?

Ans.--At different prices, I think it went as low as 90 *Cents* a sack, and it is \$1.00 now.

Ques.--You say that Mr. Blankenship told you that he thought the firm would have \$1000.00 profit when they got everything straightened up?

Ans.--A short time before the invoice in January, 1900.

Ques.--And you further say that he told you at different times that the firm was making money and doing a successful business?

Ans.--Yes sir, but I don't remember the dates, it was when we would be talking about the business.

Ques.--Did he ever tell you at any time after that first inventory was taken that he thought the firm was making money or would have a profit when the business was closed up?

Ans.--I don't remember that he ever did.

Ques.--You say that Mr. Johnson came there on one occasion and told you that he had sold a lever in a threshing machine to Mr. Blankenship and was to take half of it in the store, that he had got some \$6.00 or \$7.00 in goods which Mr. Blankenship had charged to himself; that you looked on the books and did not find it on Mr. Blankenship's account. Did you say anything to Mr. Blankenship about it?

Ans.--No sir, but I told my father about it as soon as I



went home.

Ques.--When was that when Mr. Johnson was there as above stated?

Ans.--In July 1899 according to my best recollection.

Ques.--Why did you not call Mr. Blankenship's attention to the fact that he had neglected to charge himself with the goods got by Mr. Johnson?

Ans.--It was not my business; I told my father as he was the man who was running the business.

Ques.--You nor your father at that time had no suspicions against Mr. Blankenship did you?

Ans.--I never did till that time that I know of; I don't know what my father thought.

Ques.--What was the amount of goods then let Mr. Johnson have?

Ans.--\$4.00 or \$5.00. I don't remember exactly. All I remember that he got from me was a bolt of domestic and some syrup.

Ques.--When was it that you opened the mail and found some duns for something like \$500.00?

Ans.--It was just a short time before Mr. Blankenship went out of the business, I don't remember the date.

Ques.--Who was these duns from?

Ans.--I do not remember.

Ques.--Do you know whether these bills were paid before your father took possession of the store or not?

Ans.--I know they were not paid till he paid them.

Ques.--If you do not know who the bills were owing to, how do you know that your father paid them?

Ans.--I know he wrote checks and I took them and mailed them,



and he asked them to wait for the balances.

Ques.--Were those checks sent before or after your father took charge of the store?

Ans.--Before.

Ques.--Did your father pay anything on the indebtedness of the firm of P.F.Chance & Co. after August the 25th 1899 until he took charge of the store abo t the 1st of September, 1900. If you answer that he did, please state to whom he made the payments?

Ans.--I don't remember who he sent the checks to, but I know that he wrote to the parties and sent the checks, and Mr.Blankenship was in the store when I mailed the letters.

Ques.--I will ask you to take this book, which has already been filed before the commissioner, and look at the items 1899 to C.M.McClung & Co. \$150.00, Daniel Briscoe & Co. \$100.00, and the date Sept.3rd, 1900paid into firm to Glazebrook & Co.check \$104.02, and same date paid to Altscheller & Co., and state in whose hand-writing those four items are?

Ans.--All that is in the hand-writing of my father.

Ques.--What time you stayed at the store of P.F.Chance & Co. by whom were employed and who were you staying for?

Ans.--I was under my father's control and did whatever he said, and he sent me down there, said that Mr.Blankenship needed help in the store. Most of the time I stayed in the store, but sometimes I stayed with Mr.Blankenship.

And further this witness saith not.

L. P. Chance

Virginia, Lee County, to wit:

I, L.T.Hyatt, a commissioner in cahncery &c.,do certify



that the foregoing depositions of David P.Chance and P.F.Chance  
were duly taken, subscribed and sworn to before me at the time  
and place and for the purposes therein mentioned.

Given under my hand this the \_\_\_\_\_ day of May, 1900.

L. T. Hyatt  
Comm.



P. F. Chance  
vs. Ind. Cms  
John Blairship  
Rebuttal Depositions of  
P. F. Chance  
D. P. Chance



The deposition of P.F.Chance, taken before me, L.T.Hyatt, Commissioner in the chancery cause of P.F.Chance vs. John Blankenship, pending in the Circuit Court of Lee County, Virginia, at the Law Office of myself, in the town of Jonesville, Virginia, on the 25th day of April, 1901, to be read as evidence in behalf of the plaintiff in said cause.

Present: M.G.Ely, counsel for the plaintiff;

C.T.Duncan, of counsel for defendant.

Ques.I.--Please state your age, residence and occupation?

Ans.--Age, 52 years; residence, Beech Springs, Lee County, Virginia; occupation, farming.

Ques.--Please state who composed the mercantile <sup>firm</sup> of P.F. Chance & Co.,?

Ans.--Myself and Mr. John Blankenship.

Ques.--Please state when and where said partnership was formed, and state in detail the contract or terms of said partnership?

Ans.--Before we formed any partnership there Dudley McDonald was talking of selling out, and Mr. Blankenship mentioned the matter to me. He was agent at that time for the L. & N.R.R. Co., there; and said to me that if we would buy him out and run a little stock of goods there, he thought we could do a good business, but said that he was not able to put anything into the real estate himself. I got him to get the prices from Dudley McDonald, which were \$350.00 for the real estate; and I concluded to and did take said real estate at \$350.00. The post-office was then being kept in the said McDonald building, and when we invoiced the good and I took possession of the house and goods, Dudley McDonald turned the post-office over to me. I be-



I said to Mr. Blankenship, as you are living here you take the post-office and I will be deputized if it suits, and we will divide the profits equally if there are any. The contract between us in regard to the mercantile business was to put in what we could, and run a small stock and go halvers in the profits of said business, or bear equally the losses. I put into said firm from time to time various sums of money at different times which amounts in the aggregate to \$1477.35, as I count it. The amount and dates are shown by a book which I here file as a part of my deposition. The amount which said Blankenship put in was \$160.00 or about that as I count it, which is also shown on the opposite page of said book. This book was kept by Mr. Blankenship, and the entire of the amounts he put into the firm are all in his hand-writing, and also the entries of a part of the sums which I put in. Some of the entries of the sums which I put in are in my hand-writing. The said partnership began about October, 1895, as I remember it; and ended about September 1st 1900.

Ques.--Please state the condition of your mercantile business at that time, and all about the dissolution of the firm.

Ans.--I went down last January, a year ago, myself and two sons, George and Dave, and took an inventory, which was the first inventory taken after the firm began business. As I remember, the stock on hands was \$2205, not counting scales, show case and some hides and stuff in the lumber room. Mr. Blankenship took his book and gave out to me the indebtedness of the firm, and I set it down and made a calculation the best I could and made it \$1400 and some odd dollars that the firm owed. And



the way I counted we could not get the ends together. I instructed Mr. Blankenship to run down the stock of goods till the first of May and pay up our indebtedness.; he agreed to that and said he would not buy another thing, that he would let me do the buying. A short time after that Mr. Johnson, a drummer, was there and wanted to sell us some shoes. ~~Theyxxx~~ My son, Dave, who was there at the time, phoned to me about buying the shoes, and said he wanted a few coarse women's shoes and a few coarse men's shoes, and I phoned back to him that I wanted that stock of goods run down, but he might four dozen pair of shoes, 2 doz. men's and 2 doz. of women's coarse shoes. When the shoes come and the bill for the shoes, there was \$214. plus of the bill. I went down and went over the agent and told him that as I could not sort the shoes handily out of the boxes, that is, the shoes which I had bought from the ones I had, not that he could just ship the whole lot back to Knoxville, to the House. The goods were shipped back. These were all the goods I ever bought and they were never put in the house. I went down on the morning of the first day of September, 1900, is my recollection, and told Mr. Blankenship that I wanted to take an invoice, that I had traded out or partly traded out to Mr. Marsee and George Chance. And he said all right, but that he had rather run down the stock of goods on hands. But he said all right. We then invoiced the goods. Mr. Blankenship gave out and Mr. Marsee and George set down in books the goods at cost price is what Mr. Blankenship said. The inventory amounts to \$1956. and some cents. The intention was that Mr. Marsee and George were to keep duplicate invoices of the goods and prices which Mr. Blankenship gave out to them



Then Mr. Blankenship then gave out to me a list of accounts and notes due the firm of P.F. Chance & Co., which I set down, and Mr. Blankenship also set down a part of them. The list of notes and accounts as it is footed up amounts to \$1166.01. I don't believe I could collect \$500.00 out of them. If Mr. Blankenship would assist me in settling with the parties, more might be collected, but Mr. Blankenship refuses to have anything to do with the matter.

Ques.--Please state what amount Mr. Blankenship represented to you on the day of the last invoice ~~what amount~~ the firm owed?

Ans.--He says the firm was not in debt over \$1000 or \$1200. I said to him, Mr. Blankenship, I want you to stay in here, keep the office in here, and help me settle up this business, and let us try to make the very best out of it we can. He answered that he would, that he had rather be buried in a pauper's grave than act dishonest with a man. I said to him that he had an interest in there, "you claim", And that same evening I saw him talking with Mr. Crouse, and after that conversation he came back and told me that he was going to move the post-office. I begged him not to do that, to remain there and help me settle up that business; and he did not say then whether he would or not. Next morning, at home, the news came to me that he was moving the post-office out to Mr. Crouse's.

Ques.--Did you and him at that time or any other time make a final partnership settlement?

Ans.--No, sir.

Ques.--Did you or not repeatedly call on him for a partnership settlement?

Ans.-- I called on and also wrote to him for a partnership



settlement, and he said he had turned everything over and left everything over there, and I won't have a thing in the world to do with it.

Ques.--Please state whether or not there was any understanding and agreement between you and him, when said partnership was dissolved that you were to take the assets of the firm and release him from all further liability?

Ans.--No, nothing of the kind was ever mentioned; he never asked me to do that.

Ques.--Please state what you ascertained, afterwards, to be the true amount of the indebtedness of said firm?

Ans.--I can't say that I exactly know; <sup>there</sup> ~~there~~ are some bills that are not paid yet, they still keep coming in. I have already paid \$1481.80 on said indebtedness out of my own individual means. \$449.02 of this amount I have paid through the Powells Valley Bank, and the balance of said \$1481.80, I deposited in the Pennington Gap Bank to the credit of P.F.Chance & Co. There has been paid on the indebtedness of said firm through the Pennington Gap Bank up to November 1st, 1900, \$1244.51 ~~up to November 1st~~, as shown by the statement of said bank here filed marked P.G.Bank I. There has been paid on said indebtedness through said Pennington Gap Bank since November 1st 1900 \$ 941.24, as shown by a statement from said Bank, marked P.G.Bk. No.2. No payments have been made on any bill until they were approved by John Blankenship, or until he said they were all right, as I did not know about them myself.

Ques.--Please state, if you know, the amount of business done during the time said partnership existed?



Ans.--The Deposit book showed from \$400 to \$700 per month, for the last years and smaller sums the first years of the business.

Ques.--What ~~xxxxxx~~ per cent of the amount of business done was or should have been profits?

Ans.--I think a low estimate would be 25% on the amount of goods purchased

Ques.--Please state what was the average amount of expenses per year in conducting said business, and of what did it consist?

Ans.--I don't know of any expenses except the fuel, and freight on goods. I mean that the 25% was profit over and above all expenses, or should have been. The goods were marked at from 10% to 50% over cost price.

Ques.--Do you know of any goods being sold below costs?

Ans.--I do not.

Ques.--Please state whether or not Mr. Blankenship kept you informed of the true condition of said business, or did he keep transactions concealed from you?

Ans.--I consider they were concealed from me; I did not know them at least.

Ques.--Please state whether or not Mr. Blankenship has helped to pay any of the firm's indebtedness since said dissolution?

Ans.--I understand he has paid \$125.00, to Mr. Marsee, which has been used in paying said indebtedness.

Ques.--Did Mr. Blankenship ever say anything to you about making any payments?


Ans.--He promised to furnish some more money, but has not done so yet.

Ques.--Please state if you know, of any misappropriation



of partnership funds by Mr. Blankenship?

Ans.--Within my own knowledge, I can't say that I do know of any.

 Ques.--In looking over the checks returned from the Pennington Gap Bank, given by P.F. Chance & Co. there is a check to Brown & Orr, for \$52. plus for a wagon. Is that wagon partnership property or not?

Ans.-- I never knew anything about the wagon.

Ques.--Please state whether or not, on the day of said invoice and dissolution, Mr. Blankenship turned over to you a bank account from \$35.00 to \$50.00, and cash to the amount of \$150.00.

Ans.--He did not.

Ques.--Please state whether or not, at the time that you and Mr. Blankenship formed this co-partnership, there was any agreement or understanding that he was to have a half interest in the house and lot in which said business was done?

Ans.--No, that never was mentioned. Mr. Blankenship never claimed that in my presence.

Ques.--Please state whether or not Mr. Blankenship put into the capital of said firm the sum of \$669.49?

Ans.--He did not; if he did, I never saw it or heard tell of it before. The hundred and sixty odd dollars is all I ever heard of his putting in?

Ques.--please state whether or not during the continuance of this business, Mr. Blankenship has been engaged in the running of any other business; if so, what?

Ans.--He traded in horses a right smart, and hired out horse when he could, to people to ride to Harlan.



He also bought 2/5 interest in a threshing machine, and has been running that two seasons.

For the last two years he has been keeping from 4 to about 7 horses, I have known him to have as high as seven at one time. Sometimes he would trade, and not have so many.

Cross-examination by C.T.Duncan.

Ques.--At the time you purchased out McDonald, and formed said co-partnership, who was the post-master at Hagan?

Ans.--H.L.Moteiro, as I understood it.

Ques.--After purchasing out McDonald, how long did Mr.Monteiro remain post-master?

Ans.--~~Just a short time.~~ At the time of the purchase, McDonald was ~~xxxx~~ assistant post-master and attended to the business, and after the purchase Blankenship attended to the business. This arrangement was continued until Mr.Blankenship became the post-master. I do not know just when Blankenship was appointed, but think it was only a short time.

Ques.--During the time that Mr.Monteiro continued to be the post-master, did the assistant get all the fees of the office, or were they divided between the post-master and the assistant?

Ans.-- I can't say how that was, do not remember.

Ques.--Now you state in your examination in chief that Mr. McDonald turned the office over to you. Did you then qualify as assistant, or deputy post-master, or did you ever qualify as such until after Mr.Blankenship became the actual post-master?

Ans.--Not till after he became the actual post-master.

Ques.--Did you ever attend to the office in any way, if so, state the extent of the time and attention which you gave to it.



Ans.--Nothing more than to hand out letters some times, but not to amount to anything scarcely.

Ques.--Now, at the time of the formation of this partnership, you nor Mr.Blankenshi neither one knew, did you, that he would ever be appointed post-master?

Ans.--Of course, I did not know that, but still we expected that he would.

Ques.--Now, do I understand you to say that it was a part of the contract formed between you and Mr.Blankenship that he should be appointed post-master, attend to the duties of that office, assume all the responsibility, and give you one half of the fees?

Ans.--That was the understanding, that I was to have one half of the fees.

Ques.--What was the consideration moving from you to him which were to entitle you to one-half of the fees of the post-office?

Ans.--I had bought the property, and was not to charge him any rents. I mean the property in which the business was done.

Ques.--Was it not a part of this contract, when you formed the copartnership, to do the mercantile business that you have spoken of, that you should furnish, free of charge the house to do it in?

Ans.--No, sir it was not. There was no such contract.

Ques.Wasn't you to furnish the house to do the business in?

Ans.--Oh, yes.

Ques.--Was any rents to be paid to you for it?

Ans.--No, sir.

Ques.--Please state exactly the terms of the contract be-



tween you and Mr. Blankenship?

Ans.--I was to furnish the house, he was to put in what money he could, but did not state what amount, he was to do the business, and the profits were to be divided equally, or to bear the losses equally.

Ques.--You state, in your examination in chief, that you took an inventory of the stock of goods that you had on hands about the 1st of January, 1900, and that said stock then amounted to \$2205. Did Mr. Blankenship assist in making that inventory?

Ans.--Yes, sir; he gave me the cost mark and the amount on hands, and I set down as he gave it to me?

Ques.--Have you that inventory; if so, please file it as a part of your deposition?

Ans.--I haven't it with me; I have it at home.

Ques.--Now, please state, if you know the amount of deposits made in bank between the first day of January, 1900, and the 1st of September, of the same year, when you took charge of the goods then on hands?

Ans.--I think there was something over \$2800. deposited as shown by the deposit book, between the times stated.

Ques.--Now, please state, if you know, the amount of goods purchased during that time?

Ans.--I do not know, there must have been a right smart.

Ques.--If you remember, you may state the indebtedness to the firm when you took that first inventory?

Ans.--Between \$500 and \$600 is my recollection.

Ques.--In taking each of the inventories that you have spoken of, was anything added for freight that had been paid?



## II

Ans.--Nothing that I remember.

Ques.--Can you give me anyways accurately the per cent. on original cost that it takes to deliver the goods in the house at Hagan?

Ans.--I can not at present, but I would think it would take somewhere from 3 to 5%.

Ques.--Before you went to the store of P.F.Chance & Co., about the first of September, 1900, and announced to Mr. Blankenship that you had sold the stock of goods then on hands to P.H.Marsee and your son, George, Had you had any consultation with him, and any agreement with him as to a sale of said goods to said parties?

Ans.--I had not, but he had remarked to me that at any time I wanted to make a change, it was all right with him.

Ques.--On that day when you went there and told him that you had traded out or partly traded out to Mr.Marsee and George Chance, did you tell him the terms on which you had sold them?

Ans.--I did not, and he did not ask me for the terms.

Ques.--Did he consent to said sale, or object to it.

Ans.--He remarked that he would like to run it on a couple of months if it suited; if not, he was ready to take an inventory.

Ques.--Was the inventory taken one between you and Mr. Blankenship, or was it not rather an invoice of the goods to your purchasers?

Ans.--It might have been termed to the purchasers I reckon and myself too.

Ques.--Now who were the purchasers?

Ans.--George and Mr.Marsee, and I retained an interest.



Ques.--What interest did you retain?

Ans.--About 2/5, that is, if I recollect correctly I had or put in \$1011, Mr.Marsee \$992, and George \$500.00.

Ques.--Was Mr.Blankenship present all the time you were engaged in taking the last inventory of goods?

Ans.--He was.

Ques.--Did he assist in making all of it?

Ans.--He did, he gave out the cost price.

Ques.--You state that there was \$1166.01 of accounts, notes &c. invoiced; that you don't believe you could collect \$500.00 out of. Will you please state how much has already been collected out of them.?

Ans.--I don't know exactly, but something over \$200 is my recollection.

Ques.--Was the inventory all taken in one day?

Ans.--It was not, it seems to me we were about three days in finishing up. I see from the inventory taken that we began on the 27th of August, and I guess we got through about the 1st day of September.

Ques.--Please state, if you know, the amount of goods purchased by said firm during the time it was in business; and give as nearly as you can the purchases each year?

Ans.--I could not do that without going through the papers and making a great long calculation. I have very little personal knowledge about the matter.

Ques.--You state in answer to a question propounded to you in your examination in chief thwt you consider that Mr.Blankenship kept the true condition of the business concealed from you during its continuance, or at least that you did not know its



true condition. Did you take any steps to ascertain from Mr. Blankenship its true condition, if so, what steps?

Ans.--I would go in and hunt up bills and have him to hunt them up, and we would talk over the matter, and I would ask him if that was all, and he said it was.

Ques.--Did you not know even before the first of January, 1900, that said concern was doing a losing business?

Ans.--I did not.

Ques.--You did know, did you not, that it was not self-sustaining?

Ans.--I did not.

Ques.--How did you account then for the fact, if you thought the business was self-sustaining, that you were being called on so frequently for money from your private means to pay bills?

Ans.--The idea struck me that the stock was increasing, and I thought that was the cause of it. I did not know the amount that he had out.

Ques.--How often did you visit the store?

Ans.--Sometimes once a week, and sometimes it would be three or four weeks. It depended on the business I had on hands on the farm.

Ques.--In these visits could you see any marked change in the store showing increase or decrease of stock?

Ans.--Yes, sir I could.

Ques.--What was the change which you observed, one of increase, or decrease?

Ans.--I observed the increase. When a new bill of goods came in, it showed up much better.



Ques.--How frequently did you visit the store from January 1st, 1900 to the time you took charge of it?

Ans.--Along while the weather was bad, I went down once a week, but after the spring opened up I don't suppose I was there on an average over once a month, possibly.

Ques.--Now, during this last period could you see much difference in your recurring visits in the appearance of the stock as to increase or decrease?

Ans.-- It seemed that the stock was kept up pretty well during the summer; sometimes it would run down a little lower than at others?

Ques.--Did not your son, Dave, stay there all, or most of the time during that period?

Ans.--No sir, he did not. I worked him in the field. He stayed there some three or four weeks after the first inventory was taken, and as soon as farming weather opened out I put him to work on the farm.

Ques.--You say you understand that Mr. Blankenship has turned over to Mr. Marsee \$125.00 which has been used in paying said indebtedness. That was money that was on hands at the time you took charge of the business was it not?

Ans.--That is not my understanding. Mr. Blankenship told me, as I understood him, that he got it from his brother, Cephas. This money was turned over very shortly after, perhaps a week or ten days after I took charge of the business.

Ques.--You state in answer to a question propounded to you that you find among the checks drawn by F. Chance & Co. on the Pennington Gap Bank one for something over \$52.00 paid to Brown & Orr for a wagon, and that you never knew anything about



the wagon. Do you know whether the wagon was not purchased to be used in and about the business of the concern?

Ans.--It was not. If it was I knew nothing about it.

Re-direct Examination.

Ques.--Please state what the post-office at Hagan paid annually?

Ans.-- from \$16.00 to \$21.00 per quarter, until we got a supplement of \$40.00 per year, and I do not remember exactly what time the supplement came in.

Ques.--Please state when where and how you learned that Mr. Blankenship was not keeping you informed as to the true condition of the indebtedness of said firm?

Ans.--In was in January 1900 a short time after taking the first inventory. We had run up the indebtedness after we completed the inventory, and he gave me out everything that was there or that he knew anything of, so he said ; and I took a statement of it and took it home with me as he gave it out to me. I got to looking through the bank account and check book and I found a check was drawn out for \$124. plus to L. Moses & Co. When I went back and looked up the book, I found L. Moses & Co. had not been given out to me.

Re-cross examination.

Ques.--Have you that list of indebtedness which Mr. Blankenship gave you in January, 1900? If you have please file it.

Ans.--I think I have it at home, and I will file it with the commissioner.

Ques.--After you discovered that perhaps the true amount of the indebtedness of the firm had not been given you by Mr. Blankenship in January 1900, and the payment to L. Moses & Co., did you call Mr. Blankenship's attention to the fact and ask for an



explanation?

Ans.--I did not from the fact that he had promised me he would not buy any more; that I could do the buying, and we would run the stock down.

Ques.--You knew did you not from the manner in which the stock of goods was kept up from January 1st 1900 to Sept.1st 1900 that goods were being bought?

Ans.--I did, of course. But we agreed to run the stock down till the first of May, the date we take out license. and that I might do the buying, and settle up our indebtedness. And if we were losing money to quit.

Ques.--Did you call on him for a settlement about the 1st of May?

Ans.--I did not. The business was not in shape to settle up. A bill had been bought in April sometime of about \$400 and was there and marked up, of which I knew nothing until the goods were marked and in the shelves; this bill was from Daniel Briscoe & Co.

Ques.--When you found that that bill of goods had been bought from Briscoe & Co. and were marked and up in the shelves, did you make any complaint to Mr.Blankenship in regard to it?

Ans.--I did not.

And further this witness saith not.

J. F. Chance

P H.Marsee, another witness of lawful age, being duly sworn, deposes and says:

Ques.--Please state whether or not you were present and assisted in taking an invoice for P.F.Chance & Co. about the 1st of September, 1900, and if so, state what you did?



Ans.--I was present, and assisted in taking such an invoice. I took the amount of the goods as Blankenship gave it to me and the price of them as we got it from the bills, and where there were no bills, as marked on the goods, and listed the goods and amounts on a book.

Ques.--Did you take said invoice down correctly?

Ans.--I think I did, I tried to.

Ques.--Who else took an invoice.

Ans.--George Chance.

Ques.--Please state whether or not, if you know, there was any bank account, or cash on hands turned over to P.F.Chance during or after the invoice was taken?

Ans.--There was nothing in the bank turned over that I saw any statement of it. I remember \$16.75 being counted at the time the invoice was being counted, but I don't remember whether Mr. Blankenship sent it to the bank or whether we sent it. Sometime after the invoice was taken Mr. Blankenship paid me \$100.00 and at another time \$25.00 to be paid on the firm's indebtedness. This was some week or ten days or more after the invoice was taken, I do not remember the exact date.

Ques.--Please state whether or not you heard Mr.Chance insisting on Mr.Blankenship to stay with the business and help settle it up and pay all the debts?

Ans.--I did.

Ques.--

Cross-examination.

Ques.--Was the inventory which was taken as above stated by you an invoice of the goods as between Chance & Blankenship or an inventory of the goods as between Mr.Chance, George and



yourself on the sale made by Mr.Chancee to you.

Ans.--It was between Mr.Chance and George and myself, is the way I understood it.

Ques.--Were the goods invoiced at the original cost price or at cost and carriage?

Ans.--At the original cost price, so Mr.Blankenship said, and as the bills showed so far as we had bills.

Ques.--Have you ever made a careful calculation and observation so as to be enabled to state the proportion of per cent. which the boxing, drayage, and freight charges bear to the original cost of goods? If you have please state what it is?

Ans.--I have not on goods that were there then.

Ques.--I notice from the deposit statement from the bank that on the 4th of September, 1900, you deposited \$25.00, and on the 7th day of September \$291.00 to the credit of P.F.Chance & Co. Do you know from what source you got these two amounts?

Ans.--Part of it was money that Mr.Chance brought down there, part of it was for goods we sold there in the store, and possible the \$25.00 maght have been money paid by Mr.Blankenship.I find from looking at a memorandum which Mr.Chance has that he brought \$255.

Ques.--I ~~see~~ on the deposit slip aforesaid that on the 22nd day of Spt. 1900 you deposited \$441.22, and that on the 29th of the same month you deposited \$252.44. Do you know whether these sums all arose out of the business or whether a part of them came from Mr.Chance's private funds?

Ans.--\$421.22 of the first sum namesd came out of Mr.Chance's private funds, but as to the last amount I do not remember, though possibly \$202 was furnished by Mr.Chance.



And further this deponent saith not.

P.H. Marsee

Virginia, Lee County, to wit:

I, L.Y. Hyatt, Commissioner &c., do certify that the foregoing depositions of P.F. Chance and P.H. Marsee were duly taken subscribed and sworn to before me at the time and place and for the purposes therein mentioned. Given under my hand this the 25th day of April, 1901.

L.Y. Hyatt, comr.



P. F. Chance  
vs { In Chy.  
John Blankenship.

---

Depositions.

---

Depositions



To the Honorable H.A.W.Skeen, Judge of the circuit court  
for Lee County, Virginia:

Having been appointed by a decree rendered by said court  
at the March term, 1901, in the chancery cause therein pending,  
entitled "P.F.Chance vs. John Blankenship", a special commissioner  
to make a settlement of the partnership business of the late  
firm of P.F.Chance & Co., respectfully report that I have com-  
plied with the said order in the following manner.

I prepared and had served on each of the parties a notice  
fixing April 8th as the time for the execution of the said de-  
cree, and on that day both parties appeared and by agreement a  
continuance was taken to the 24th, and from then to the 25th of  
same month.

On the said 25th the plaintiff took before me his own depo-  
sition and that of Mr. Marsee, and filed with me a good sized  
telescope full of books and papers relating to the said part-  
nership business, after which an adjournment was taken to the  
30th of April at the request of the defendant.

On April 30th the defendant took before me his own depo-  
sition, and the ~~the defendant~~ <sup>plaintiff</sup> gave his deposition in rebuttal,  
and on the next day took the deposition of his son, Dave Chance,  
in rebuttal.

At this point each side closed their evidence, and sub-  
mitted the case to me. The said depositions were taken down  
in writing and are herewith returned.

The case has proven a very difficult one for me to ar-  
rive at a conclusion in; the contract of partnership was not  
in writing; the plaintiff's bill alleges one contract; the  
defendant's answer alleges it to be different; and the proof,



as I see and understand it, shows the contract to have been different from that alleged by <sup>either</sup> the bill or answer. In fact the parties agree, in their testimony, almost exactly as to what the contract was, while the contract as alleged by the bill and answer respectively, is very different~~er~~.

The first point to be determined is in regard to the post-office. I find from the evidence that the proceeds arising from said office should be divided equally, and one half credited as capital put into the business by each of the partners. The entire proceeds of said office during the continuance of said business was \$509.49; so each partner should be credited with \$254.74 capital derived from this source and put into the business.

The next and main point, leaving the post-office out of the question, to be determined is what the contract was. From the evidence I find that said partnership was to be an equal partnership; that Chance was to furnish the house in which the business was done free of rent; that Blankenship was to do the business, that is, the buying and selling of the goods; that Blankenship was to put into the business what money he could raise; that Chance was to put into the business such sums of money from time to time as should be found necessary to the conduct of the business; that each partner was to be allowed to take from said store goods for his own use at cost; and that the partners were to share equally in profits and losses as the case might be.

I find that under said contract said Chance did furnish the house in which the business was done; that Blankenship did in the main do the business; that Blankenship did from



time to time put into the business such sums as he could, aggregating \$160.00; that Chance did put into the business various sums of money from time to time, aggregating \$1477.35; and that the business was a losing one to a very considerable extent.

As above stated Chance put into the business during its continuance \$1477.35. He has paid on the debts of said firm since the dissolution, as I count it, \$2634.77. These two sums added together make \$4112.12 the total amount invested in the business by Chance. And if he is entitled to be credited with half the proceeds of the post-office, there should be added to this \$254.74, making \$4366.86. When the partnership was dissolved Chance received from the firm, goods invoiced at \$1956.00 and notes and accounts amounting to \$1166.00. There is a difference of opinion as to the value of these notes and account, but I think probably fifty per cent. of them may be collected, and taking this view, I have added \$583 to the \$1956, thus making \$2539 which Chance got out of the wreck. This sum \$2539 subtracted from \$4366.86 leaves him <sup>Chance</sup> in the "hole" \$1827.86.

As above stated Blankenship put into the firm business during its continuance \$160.00. He has paid of the firm indebtedness since the dissolution \$125.00. Add to these two sums one half the proceeds of the post-office and we get \$539.74 as the total amount which Blankenship is out.

I now subtract \$539.74, Blankenship's loss, from \$1827.86 Chance's total loss, and find that Chance's loss is \$1288.12 greater than Blankenship's; and, in my opinion, Chance should have a judgment against Blankenship for one half of this, or \$644.06, to equalize losses.

I base this conclusion on the evidence of both parties



that they were to share equally in profits and losses under their contract.

It is true that Blankenship lost his time, and it is also true that Chance lost the rents of his house and the profits he might reasonably have expected from the use of his money and credit.

Respectfully submitted,

L. P. Hyatt

Commissioner.

Bill of costs:

|                                       |                |
|---------------------------------------|----------------|
| J. R. McDonald, D.S. Serving notices  | 1.00           |
| P. H. Marsee, wit one day 8 miles     | .82            |
| D. P. Chance " " "                    | .50            |
| Comm. 40 hours @ $\frac{75}{100}$ cts | 30.00          |
| A. G. Hyatt Statement                 | 3.00           |
|                                       | <u>\$35.32</u> |



This report is excerpted to because it does not report that  
Blanchard should have all the loss,  
M. G. Eddy, <sup>attor</sup> <sub>Genl</sub> -

COMMISSIONER.

he might reasonably have expected from the use of his money  
that he should lose the rents of his house and the profits  
it is true that Blanchard lost his time, and it is also  
their contract.  
that they were to share equally in profits and losses under



1956.

97.80

1956

2053.80

583

2636.80

4366.86

2636.80

1730.06

654.74

1075.32

537.41

8.86

1529.25

539.74

115

654.74



P. F. Chance  
vs { Lu Chy.  
John Blankenship.

---

Report of L. T. Hyatt,  
Cmr.

---



5<sup>th</sup> Term 416.

H. W. Bruce,  
Chief Attorney.

Walker D. Hines,  
Asst. Chief Attorney.

*Louisville & Nashville Railroad Company.*  
*Law Department, Louisville, Ky.*

Lyttleton Cooke,  
Dist. Attorney for Ky.

B. D. Warfield,  
Adjusting Attorney

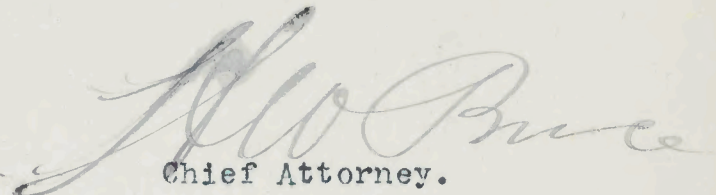
~~April~~ May 6th. 1901.

Hon. C. T. Duncan,  
Jonesville, Va.

Dear Sir;

I am in receipt of your favor of the 2nd. inst. with enclosure in the matter John Blankenship, ex-agent, at Hagen, Va., and I herewith enclose you copy of letter of the 3rd. inst. from Auditor of Receipts Becker to Comptroller Quarrier, which gives you the desired information.

Yours truly,

  
Chief Attorney.

ENC.

T. B. H.



5  
*Louisville & Nashville Railroad Company,*

*Office of the Auditor of Receipts*

11,072

*George Becker,*  
*Auditor.*

*P. O. Stewart,*  
*Asst. Auditor.*

*Louisville, Ky.*

May 3rd, 1901.

Mr. C. Quarrier,

Comptroller.

Dear Sir;

Answering your favor of even date, your file 11.072, and returning enclosures.

Our records show that on the first day of November 1895 Mr. Blankenship was indebted to the company in the sum of \$16.21. This is the balance due company shown by his October 1895 account current.

On July 1st, 1896, Mr. Blankenship owed the company \$78.28. He was checked out as agent at Hagans on July 14th, 1896, and was short \$74.24, which amount was collected through the Guarantee Company. Mr. Blankenship afterwards remitted us \$62.00, and this amount was then refunded to the Guarantee Company, they having previously settled the shortage.

Yours truly,

(Signed) Geo. Becker,

A.R.



Blankenship  
and  
Murray,

---

Statement from  
Auditor's office  
L & N R R Co



P. F. Chance - - - - - Plaintiff.)  
vs. )  
John Blankenship - - - - - Defendant.)  
In Chy.

This is a bill filed by P.F.Chance one of the members of the late firm of P.F.Chance & Company against the other member of that firm for a settlement of the business of that co-partnership.

The firm of P.F.Chance & Company were in business fifty-eight months, beginning about November the 1st, 1895 and closing out about the 1st day of September, 1900.

The terms of said co-partnership as shown by the pleadings and proofs in the case, were about as follows: Chance was to furnish the house in which the business was done free of rent; Blankenship was to attend to the business, do the buying and selling, pay for the goods out of the proceeds of their sale in so far as possible, and each were to put in from time to time such money from their private means as was necessary to run the business. It was conceded and well understood at the time that if any money of any consequence was put in that it must be done by Chance as Blankenship was without means. As stated by the bill, Blankenship's labor was to be put in against Chance's excess of capital, and then each partner was to share equally in the profits and losses. It thus appears that each partner in this business had an equal interest therein. That is, when Chance put in his contribution of capital and Blankenship put in his contributions of capital and labor, then these contributions by each constituted a common partnership property, and each were equally interested therein. From this statement the results are easily deducible whether they be in profits or losses.

The proof shows that while this business was being conducted that Chance from time to time, contributed or put into said business, \$1477.35; that Blankenship put into it in cash \$160.00, from the proceeds of the post office \$509.49 and fifty-eight months of labor worth \$20.00.

The first inquiry that arises, though of practically no utility in the settlement of matter, is, did Chance contribute his money or the excess thereof over Blankenship's money, or, did he simply contri-



bute the use of it? We say that the answer to this inquiry is of very little practical utility in the settlement of this case. It would however be of importance if profits had been made instead of losses sustained, but whether he contributed his money or the use of it alone the same results follow in this case. The rule is, in partnerships, where labor is contributed on the one side and on the other use of money is contributed, the partner contributing the use of the money does not admit his co-partner to a share in the capital but only to a share of the profits which such labor and money joined together produce, and if loss results from such a venture it must be borne by the partner furnishing the money, As the one furnishing the labor has already lost his labor so likewise the other has lost his money and there is no contribution between them. In all cases where one party contributes the use of money and the other contributes labor, the partner contributing his labor has no claim to the principal money in the partnership or any part of it, and he cannot be obliged to make good the loss sustained or to bear any part of it.

But if the partner furnishing the money contributes the property of his money so that the joint stock upon which each of them has a common claim is made up of his principal money and of the other's labor, then the partner who labors has a claim upon the principal money itself; and consequently whenever the partnership is dissolved, if the principal money or any part of <sup>it</sup> is safe he ought to have a share of it but if the money is lost it is the loss of the firm and is adjusted in that way, that is the man who contributed money has lost his money while the one contributing the labor has lost his labor.

See Story on Partnership, Chap. 3, and especially note 2 to sec. 267. Lawson Rights, Remedies and prac. Vol. 2, sec. 669, and Illustrations of that section.

The whole of this doctrine is well stated in Vol 3, Amer. & Eng. Dec. In Eq. p. 193: "When one partner furnishes only money and the other contributes only time, labor and skill, each, as a general rule, must bear his own loss in case of failure, without contribution from the other, though the respective proportions of the different contributions to the capital are disproportionate".



Having now stated the principles applicable to partnerships of this kind it remains ~~unnecessary~~ only necessary by simple calculation and statement to show how these partners stand in relation to each ~~other~~ other and to said co-partnership business. The proof shows that

|                                                                                           |                  |
|-------------------------------------------------------------------------------------------|------------------|
| P.F.Chance put in, in cash, while the business was in operation.....                      | \$1477.35        |
| " Interest on purchase price of house and lot for 58 months. <i>by way of rents</i> ..... | 101.50           |
| " Has paid out on debts of firm since dissolution.....                                    | 2634.53          |
| Making a total of .....                                                                   | <u>\$4212.38</u> |

|                                                                           |                  |
|---------------------------------------------------------------------------|------------------|
| P.F.Chance has drawn out goods .....                                      | \$1956.00        |
| " Add for freight &c. ....                                                | 97.80            |
| " Debts turned over \$1186.01 one-half of which at the least is good..... | 583.00           |
| " Cash on day of invoice.....                                             | 16.75            |
| " Cash paid Marsee by B. ....                                             | 125.00           |
| Making a total of.....                                                    | <u>2778.55</u>   |
| Which shows that Chance has lost .....                                    | <u>\$1433.83</u> |

|                                                |                |
|------------------------------------------------|----------------|
| Blankenship put in Cash.....                   | \$ 160.00      |
| " Cash from post office.....                   | 509.49         |
| " Cash paid on bills since dissolution.....    | 115.00         |
| " Cash paid to Marsee for Chance. ....         | 125.00         |
| " 58 months services at \$20.00 per month..... | 1160.00        |
| Making a total put in by Blankenship.....      | <u>2069.49</u> |

All of which is lost. It is thus shown that while Chance <sup>3</sup> has lost considerable, Blankenship is much the heavier loser.

It will be noticed that in the above statement Chance is only charged with \$583.00 for notes and accounts turned over to him, while in fact he received of these evidences of debt \$1186.00. In other words there is of notes and accounts, in Mr. Chance's hands \$583.01 which belongs to the firm, all of which if the debts of the firm have been all paid should be turned over to Mr. Blankenship to make up to him as far as it will go the large amount of his losses over and



above those of Mr. Chance, or in any event as these debts are partnership assets unappropriated they should be equally divided between the parties.

There are some intimations in the bill and in the proof that Mr. Blankenship has misappropriated funds belonging to said copartnership. The answer emphatically denies such allegations. The answer is sustained by the sworn evidence of Mr. Blankenship, and the proof offered by the plaintiff to show embezzlement or misappropriation of the funds falls so far short of sustaining the allegations of the bill that it is useless to comment further upon it.

The most that can be said of the business is that it was not successful. This mercantile venture failed like ninety five per cent of such undertakings, and each of the partners are alike responsible for that failure. Chance gave the business no attention, and Blankenship allowed the spirit of competition, not only to override his judgment but to whittle away, not only his profits, but to swallow up the money and the labor invested in the business; and so endeth the chapter, and it only remains necessary now to place the usual inscription upon the tomb of this mercantile venture: "It is one of the ninety five per cent of failures".

The bill in this case should be dismissed and Mr. Chance should pay the cost.



Blanken ship

ads

Bruf

Chance



P.F.Chance

vs.

John Blankenship.

Commissioner Hyatt's report in the above styled cause is excepted to by the defendant for the following reasons; to-wit;

1. Said report is contrary to the law and the evidence.

2. Said report entirely ignores the pleadings in the cause and all the evidence introduced both by the plaintiff and the defendant, and set up and adopts an imaginary contract not claimed either in the bill or the answer and not warranted by the proof.

3. The Commissioner erred in giving to the plaintiff Chance one-half of the fund arising from the post office. At the time the contract of partnership was entered into neither party had any right to the post office. Some time afterwards Blankenship was appointed post master, executed bond as such and assumed all the responsibilities of the office, and according to the evidence the only thing upon which Chance can base a claim to any part of the salary of post master is a conversation occurring between himself and Blankenship some time after the partnership was entered into in which Chance said to Blankenship that as Blankenship had the depot agency and the express agency that he ought to give him part of the post office, to which Blankenship assented. This is a nudum pactum and is without consideration.

4. The Commissioner entirely ignores Blankenship's labor in attending to the business while he gives great prominence to Chance's money. The Bill alleges that Blankenship's labor was to be butted against Chance's excess of capital; the answer admits this allegation; the proof does not alter it and could not alter it because that is fixed by the pleadings, yet the commissioner entirely ignores this plain allegation and admission as a fact.

5. The Commissioner entirely ignores (even on his own view) and refuses to allow Mr. Blankenship credit for \$16.75 turned over on the day of the invoice and \$115.00 paid on bills.

6. The true view of this case, ~~leaving~~ is presented in the statement filed with and as a part of the defendant's brief, which shows both parties were losers but Blankenship in ~~uch~~ the largest sum



and said report is objected to because the Commissioner did not adopt these views and make his statement in accordance therewith.

7. Said report is further objected to because nothing was added by the Commissioner to the inventory of the goods taken by Chance at the dissolution for freights which had then already been paid by Blankenship out of firm proceeds.

8. Said report is further objected to because the Commissioner does not add to the inventory of notes and accounts the additional ones mentioned ~~mentioned~~ by Blankenship in his deposition. Which were the Patton Morgan account and others.

*B. H. Sowell & C. T. Lumsden  
for the Defendant*

---



COPY OF DECREE.

Virginia,

At a circuit court continued and held for Lee county, at the court-house thereof, on Wednesday, the 13th day of March, 1901.

Peter F. Chance, . . . . . Plff.

vs.

In Chancery.

John Blankenship, . . . . . Deft.

Upon the calling of this cause, on motion of the defendant, leave is granted him to file his answer to said bill, which said answer is accordingly filed, and to which said answer the plaintiff replies generally, and was argued by counsel.

on consideration whereof, the court is of opinion that the partnership account between the plaintiff and defendant under the firm name of P.F. Chance & Co., should be settled, it is therefore adjudged, ordered and decreed that L.T. Hyatt be and he is hereby appointed a special commissioner for the purpose, who will take state and settle the said partnership account, and in order to enable the said commissioner to perform said duty, the court doth further order that the plaintiff and defendant do severally deliver all books and papers belonging to said partnership to said commissioner. Before proceeding to execute this decree, said commissioner will give the parties or their attorneys at least five days notice of his sitting. He will report the evidence upon which he acts together with such matters as he may deem pertinent to the matters herein, or required by either party in interest. And the cause is continued.

A copy, Teste: L.B. Munsey, clerk.

COMMISSIONER'S NOTICE!

The parties interested in the decree of which the above is a copy, will please take notice that I have fixed the 8th day of April, 1901, and my Office in the town of Jonesville, as the time and place for the execution of the same, when and where they are required to attend with such books, papers and evidence as will enable me to comply with the said order of the court.

This March 26th, 1901.

L.T. Hyatt,  
Special Commissioner.



Wm. Martin 33rd, 1901.

as will enable me to comply with the said order of the court.

They are required to attend with such books, papers and evidence

time and place for the execution of the same, when and where

will, 1901, and my Office is in the town of Jacksonville, on the

a copy, will please take notice that I have fixed the 8th day of

The parties interested in the record of which the above is

COMMISSIONER'S NOTICE

A COPY, Series: \_\_\_\_\_

CLERK.

Peter F. Chauce  
vs' { Lu Chy,  
John Blaukenship.

Notice of Commis-  
sioner's Settings

Executed by delivering  
a true copy of the within  
notice to John Blauken-  
ship, and Peter F. Chauce  
by leaving a copy with wife of Mr.  
on the 29th day of Nov<sup>r</sup>

1901.

J. R. McDonald Deputy  
for W. J. Milham,  
Sheriff Reel Co.

Peter F. Chauce.

At a circuit court conducted and held for the county of  
the court-house thereat, on Wednesday, the 13th day of Nov<sup>r</sup>, 1901.

Virginia.



P. F. Chance

vs. { Dr Cley-

John Blankenship

Exceptions to  
Commissioner's Report.